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SIDNEY'S

Discourses on Government.

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SIDNEY

William Inglis

DISCOURSES

ON

GOVERNMENT.

BY ALGERNON SIDNEY.

PUBLISHED FROM AN ORIGINAL MANUSCRIPT OF THE AUTHOR.

TO WHICH IS ADDED,

AN ACCOUNT OF THE AUTHOR'S LIFE,

AND

A COPIOUS INDEX.

IN THREE VOLUMES.

VOL. I.

New-York:

PRINTED FOR RICHARD LEE,

BY DEARE AND ANDREWS.

1805.

THE NEW YORK
PUBLIC LIBRARY
158998
ASTOR, LENOX AND
TILDEN FOUNDATIONS.
1859.

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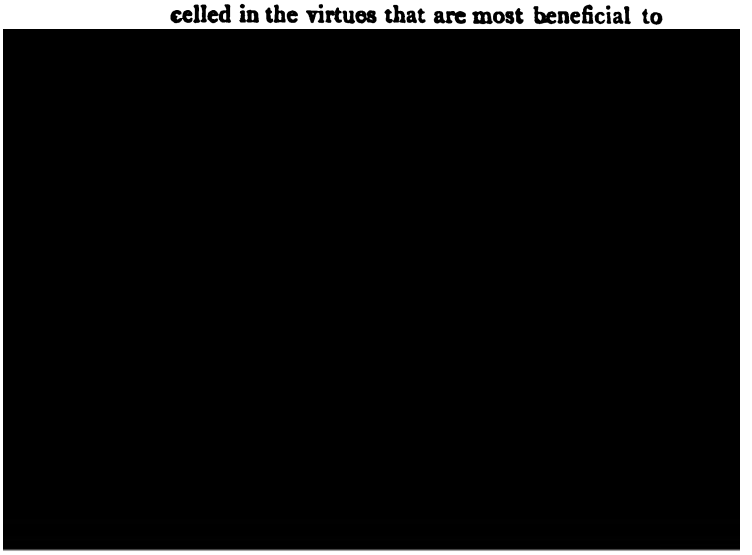

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PREFACE.*

How highly the writings of wise and good men concerning government have been esteemed in all ages, the testimony of history, and the preservation of so many books composed by the ancients on that subject, do sufficiently manifest. And it may be truly said, that unless men have utterly abandoned themselves to all that is detestable, they have seldom attempted to detract from the worth of the assertors of liberty, though ambition and other passions have influenced them to act in opposition to it. When Augustus had surprised a young Roman, who was related to him, reading a political discourse of Cicero, he commended his judgment in that choice. The history of France, written by the president De Thou, with a spirit of freedom that might have been worthy of those who had lived before the violation of

* By JOHN TOLAND. Besides the "Discourses concerning Government," he also collected, and first published, Milton's prose-works; and Harrington's works....some of them from the original manuscripts.

their liberty, has been so generally valued by men of all ranks in that nation, that it is hard to find a book on any important subject, which has had so many editions. And the just esteem, that the emperor Charles the Fifth, made of the memoirs of Philip de Commines, though that author has given so many instances of his detestation of tyranny, may be enough to put this matter out of dispute. But, if all other proof were wanting, this implacable hatred and unwearied industry of the worst of men to suppress such writings, would abundantly testify their excellency.

That nations should be well informed of their rights, is of the most absolute necessity; because the happiness or infelicity of any people entirely depends upon the enjoyment or deprivation of liberty; which is so invincibly proved in the following discourses, that to endeavour to make it more clear, would be an unpardonable presumption.

If any man think the publication of this work to be unseasonable at this time, he is desired to consider, that as men expect good laws only from good government, so the reign of a prince, whose title is founded upon the principle of liberty which is here defended, cannot but be the most proper, if not the

only time to inform the people of their just rights; that from a due sense of their inestimable value, they may be encouraged to assert them against the attempts of ill men in time to come.

It is not necessary to say any thing concerning the person of the author. He was so well known in the world, so universally esteemed by those who know how to set a just value upon true merit, and will appear so admirable in the following discourses, as not to stand in need of a flattering panegyric.... But it may not be amiss to say something of the discourses now published.

The paper delivered to the sheriffs immediately before his death, informs us, that he had left a large and a lesser treatise, written against the principles contained in Filmer's book; and that a small part of the lesser treatise had been produced for evidence against him at his trial. It is there also said, that the lesser treatise neither was, nor probably ever should have been finished. This therefore is the large work mentioned in that paper, and not the lesser, upon part of which the wicked sentence pronounced and executed against him was grounded.

It remains only to add a few words for the satisfaction of the public, that these discourses are genu-

ine. And here I shall not need to say, that they were put into the hands of a person of eminent quality and integrity, by the author himself; and that the original is, in the judgment of those who knew him best, all written by his own hand: his inimitable manner of treating this noble subject, is instead of a thousand demonstrations, that the work can belong to no other than the great man whose name it bears.

Life and Memoirs

OF

ALGERNON SYDNEY.

THOUGH there is nothing more useful and entertaining than the lives of great and excellent men, yet it often happens, that through the neglect of their friends and contemporaries, proper materials are wanting; and thus it is in the present case. One cannot but wonder, that the life of our author, who was a man of such excellent abilities, such a lover of liberty, and who died for the glorious cause, was never attempted by any of his intimate friends, and such as were acquainted with the most remarkable passages concerning him. To retrieve this error as much as we can, we shall lay together in one view what can now be gathered from various authors, who occasionally mention the name and actions of Colonel Sydney: and it is to be hoped, that this short account, though very imperfect, may do some justice to the memory of that noble person, and give some instruction to the reader.

ALGERNON SYDNEY, descended from a very ancient and honourable family, was * second son of Robert, Earl of Leicester, by Dorothy, eldest daughter of Henry Piercy, Earl of Northumberland; to whom his lordship was married in the year 1618. The exact year when our author was born is not certain, but it was probably about the year 1622. His noble father was careful to give him a good education; and in the year 1632, when he went ambassador to Denmark, took his son with him; as also, when he was ambassador to the king of France in 1636; and the Countess, his mother, † in a letter to the Earl then at Paris, acquaints his lordship, that she hears her son much commended by all that came from thence; and that one who spake very well of few, said "he had a huge deal of wit, and ‡ much sweetness of nature." Upon the breaking out of the rebellion in Ireland, the latter end of the year 1641, he had a commission for a troop of horse in the regiment of his father, who was then lord-lieutenant of that kingdom; and he went over thither with his eldest brother Philip, Lord Viscount Lisle, distinguishing himself upon all occasions with great gallantry against the rebels. In the year 1643, he had the king's permission to return to England; for which

* Collins' Peerage of England, and Memoirs of the lives and actions of the Sydneys.

† Collins' Letters and Memorials of State, vol. ii. p. 445.

‡ This sweetness of nature (with a huge deal of wit) appears remarkably in the portrait of him, which was painted at Brusels in the year 1663, yet at Penshurst; and made, whatever some have thought, an essential part of his noble disposition.

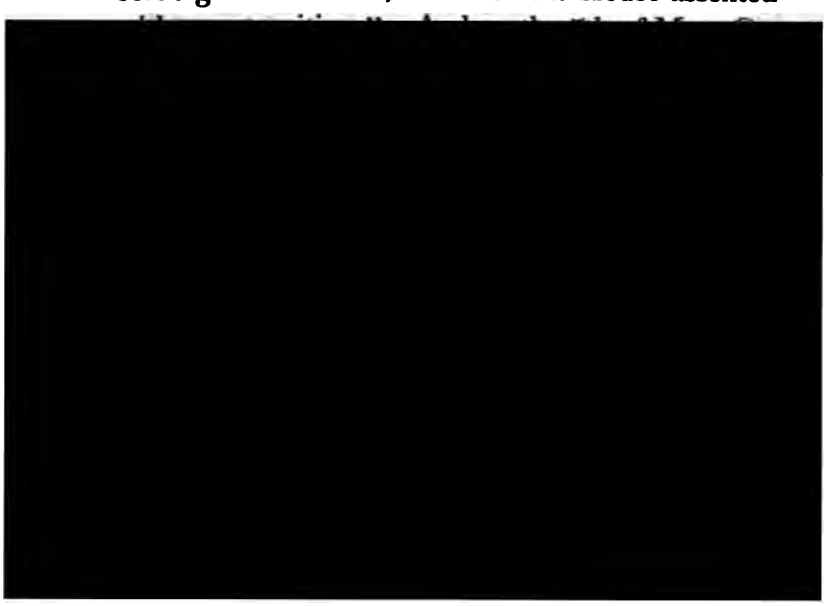
purpose the Earl his father gave him likewise a licence, dated at Oxford, June 22, that year; but landing in Lancashire August following, he was, by order of Parliament, brought up in custody to London, where he was prevailed on to take a command under them: and on the 10th of May, 1644, the Earl of Manchester, major-general of several counties, constituted him captain of a troop of horse in his own regiment. His brother, the Lord Viscount Lisle, being soon after appointed lieutenant-general of Ireland, and general of the forces there, gave him the command of a regiment of horse, to serve in the expedition thither: and it appears by the *MS. journal of the Earl, his father, that he was likewise lieutenant-general of the horse in Ireland, and governor of Dublin; and that before he went into that kingdom, he had the government of Chichester, and † was in the battle at York, and several other engagements. In the same journal the Earl writes as follows...."On the 8th of April, 1647, early in the morning, the House of Commons being then thin, and few of my son's friends present, it was moved by Mr. Glyn, the recorder, that Colonel Jones should be made Governor of Dublin in chief, and not deputy-governor to Algernon Sydney; pretending that Jones

* Collins' Memoirs, p. 150.

† Colonel Sydney also, son to the Earl of Leicester, charged with much gallantry, at the head of my Lord of Manchester's regiment of horse, and came off with much honour, though with many wounds, the true badges of his honour; and was sent away afterward to London for cure of his wounds.

The Parliamentary Chronicle, part 3. p. 273.

would not go, unless he might be governor, which was not true, Jones having accepted of the place of deputy-governor from the committee at Derby-house, who had also appointed the Lord Lisle to commission his brother Algernon to be governor of Dublin, which he had done before he went into Munster. This motion of the recorder was seconded by old Sir Henry Vane, who pretended that his conscience moved him to be of opinion, that since the House had thought proper to recall the Lord Lisle, it was not fit to let his brother, Algernon Sydney, remain governor of so important a place as Dublin. Sir William Armyn and others opposed this motion, alledging, that if they had used one brother ill, they ought not to do injustice to the other, who had so well deserved of them. But it was carried against him, and the government was conferred on Jones. After which resolution, it was moved that some recompence might be given to Algernon Sydney, according to his merit; to which the House assented



republican; and, on that account, * a violent enemy to Oliver Cromwell, when he assumed to himself the government, to which, as well as to that of Richard, his successor, he was absolutely irreconcileable. But, upon the resignation of Richard, the Long Parliament being restored in May, 1659, and having passed a declaration, "to secure the liberty and property of the people, both as men and christians, and that without a single person, kingship, or House of Lords, and to uphold the magistracy and the ministry," he adhered to them; and was appointed one of the Council of State, with the Lord Fairfax, Bradshaw, Sir Henry Vane, General Ludlow, Sir Arthur Haselrig, Fleetwood, Lambert, † Colonel Henry

* Whitelocke, p. 678.

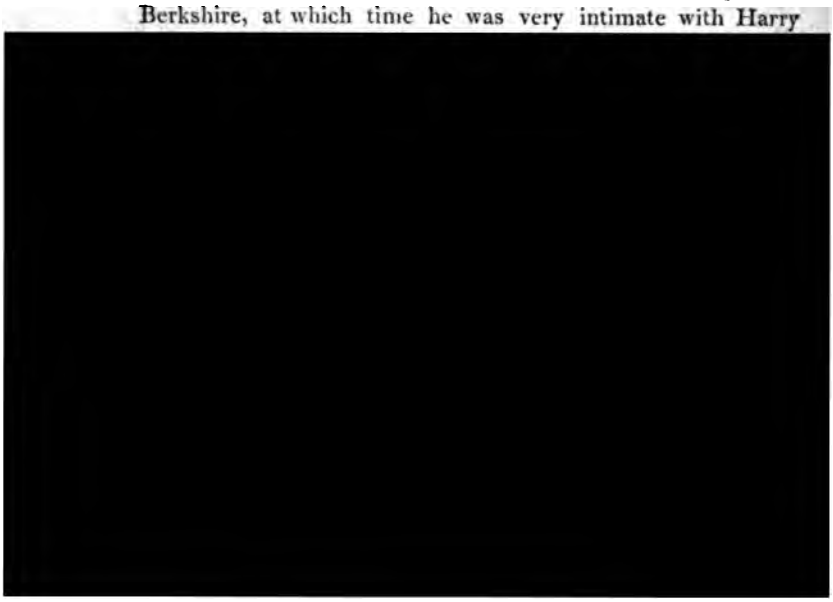
† Within two days after this discourse, from Mr. Fiennes, Mr. Hyde walking between the Parliament House and Westminster, in the church-yard, met with Harry Marten, with whom he lived very familiarly, and speaking together about the proceedings of the House, Marten told him, that he would undo himself by his *adhering* to the court; to which he replied, that he had no relation to the court, and was only concerned to maintain the government, and preserve the law: and then told him, he could not conceive what he proposed to himself, for he did not think him to be of the opinion or nature with those men who governed the house; and asked him what he thought of such and such men; and he very frankly answered he thought them knaves, and that when they had done as much as they intended to do, they should be used as they had used others. The other pressed him to say what he desired; to which, after a little pause, he very roundly answered, *I do not think one man wise enough to govern us all;* which was the first word he had ever heard any man speak to that purpose, and

Marten, Mr. Thomas Challoner, Mr. Thomas Scot, * Mr. Henry Neville, Mr. Wallop, and others....

would without doubt, if it had then been communicated or attempted, been the most abhorred by the whole nation of any design that could be mentioned: and yet it appears it had even so early as 1640 or 1641, entered into the hearts of some desperate persons; that gentleman being at that time possessed of a very great fortune, and having great credit in his county.... The life of Edward, Earl of Clarendon, part i. p. 81. oct. edit.

The Colonel was author of divers curious tracts; and was also a principal promoter of the publishing of "The first Century of scandalous malignant priests," "The King's Cabinet opened," and other state tracts....See his character in A. Wood's Athenæ Oxonienses, and in Bishop Kennett's historical register; but drawn in bitterness of wrath and anger.

* Henry Neville, second son of Sir Henry Neville, of Billingbeare. in Berks, was educated at Oxford. In the beginning of the civil war, he travelled into Italy and other countries, whereby he advanced himself much as to the knowledge of modern languages and men; and returning in 1645, or thereabouts, became Recruiter in the Long Parliament, for Abingdon in Berkshire, at which time he was very intimate with Harry



On the 5th of June, he was likewise nominated, with Sir Robert Honeywood and Bulstrode White-

it was greedily bought up, and coming into the hands of Thomas Hobbes of Malmsbury, he would often say, that Harry Neville had a finger in that pye, and those that knew them both were of the same opinion. By that book, and both their smart discourses and inculcations daily in coffee-houses, they obtained many proselytes. In 1659, in the beginning of Michaelmas term, they had every night a meeting at the then Turk's Head, in New Palace Yard, Westminster, called Miles' Coffee-house, to which place their disciples and *virtuosi* would commonly repair; and their discourses about government and ordering of a commonwealth, were the most ingenious and smart that ever were heard, the arguments in the Parliament House being but flat to those. They had a ballotting-box, and ballotted how things should be carried, by way of *Tentamen*; which not being used or known in England before, on that account, the room every evening was very full. Besides the author and Harry Neville, who were the prime men of this club, were Cyriac Skinner, a merchant's son of London, an ingenious young gentleman, and scholar to John Milton, which Skinner sometimes held the chair; Major John Wildman, Charles Wolseley of Staffordshire, Roger Coke, William Poultney, (afterwards a knight) who sometimes held the chair; John Hoskyns, John Aubrey, Maximilian Pettie of Tetsworth in Oxfordshire, a very able man in these matters, and who had more than once turned the council-board of Oliver Cromwell; Michael Mallet, Philip Carteret of the Isle of Guernsey, Francis Cradock, a merchant, Henry Ford, Major Venner, Thomas Marriet of Warwickshire, Henry Croone, physician, Edward Bagshaw, of Christ Church, and Robert Wood of Lincoln College, Oxford; James Arderne, then or soon after a divine, with many others; besides auditors and antagonists of note. Dr. William Petty was a *Rota*-man. The doctrine was very taking, and the more, as there was no probability of the King's return. The greatest of the Parliament-men hated this design of rotation and ballotting, *as being against*

locke, Esq. to go commissioners to the Sound, *in order to mediate a peace between the Kings of

their power. Eight or ten were for it, of which number Harry Neville was one, who proposed it to the House, and made it out to the members thereof, *that except they embraced that way of government they would be ruined.* The model of it was, that the third part of the Senate or House should rote out by ballot every year, so that every third year the said Senate would be wholly altered. No magistrate was to continue above three years, and all to be chosen *by ballot;* than which choice nothing could be invented more fair and impartial, as was then thought, though opposed by many for several reasons. This club of commonwealth's-men lasted till about February 21, 1659; at which time the secluded members being restored by General Monke, all their models vanished....After the Restoration, he absconded for a time; but being seized, he was among others imprisoned, though soon after set at liberty.

Among various publications, there is a curious book of his, in octavo, intitled, "*Plato Redivivus*, or a Dialogue concerning government, wherein, by observations drawn from other kingdoms and states, both ancient and modern, an endeavour is used to discover the present politic distemper of our own, *with the remedies.*" It came out first in the month of October, 1680, against the re-sitting of the Parliament, was very much bought

Sweden and Denmark. But Mr. Whitelocke was not willing to undertake this service, especially being joined by those whom he knew would expect precedency of him who had formerly been ambassa-

State, to acquaint them with the restitution of the Parliament, the officers of the several ships assembled, and sent an acknowledgment of their authority, with all possible demonstrations of satisfaction. Notwithstanding which, *being highly sensible of how great importance the sea-affairs are to this nation*, we ordered six frigates to be equipped with all diligence, and gave the command of them to Lawson, making him at the same time vice-admiral of the fleet. And this we did, as well to prevent an invasion from Flanders, with which the Cavalier party threatened us, as to balance the power of Montague's party, who we knew was no friend to the commonwealth. We treated also with Mynheer Nieuport, ambassador from the States of Holland, that a good correspondence might be maintained between the two commonwealths, and that an accord might be made between the two kings of Denmark and Sweden, (who were then enemies,) by the interposition of the two States; who, agreeing upon equitable terms, might be able to impose them on the refuser. And this we were in hopes to accomplish the rather, because neither the Dutch nor we pretended to any more than a freedom of passing and repassing the Sound, which could not well be if the command of it were in the hands of either of those Princes. The Dutch ambassador seemed very desirous to finish the treaty, but by several demands which he made in the behalf of their merchants, delayed it so long, that our agent in Holland had already concluded an agreement with the States, whereby the two commonwealths became engaged *to compel that king that should refuse to accept of the conditions which they thought just and reasonable*. In order to put this resolution in execution, the States of Holland appointed their plenipotentiaries, and we on our part did the same, sending thither Colonel Algernon Sydney, Sir Robert Honeywood, and one Mr. Boone, a merchant, to that end.

Memoirs of Edmund Ludlow, fol. edit. p. 254.

dor extraordinary to Sweden alone; and therefore he endeavoured to excuse himself by reason of his old age and infirmities: and accordingly Mr. Thomas Boone was appointed in his room. The three plenipotentiaries set out for the Sound in July following, and arrived at Elsineur on the 21st of that month; where they were attended by Admiral Montague, afterwards Earl of Sandwich, who, in prospect of a revolution in favour of Charles II. to whom he was secretly engaged, resolved to return to England the month following, with the whole fleet. Colonel Sydney, who was averse to that resolution, wrote to the Council of State, from Copenhagen, to complain of the Admiral's conduct in that point. His letters to his father, printed from the Sydney papers, and those written by him in conjunction with the other plenipotentiaries, published among Secretary Thurlow's state papers, give us a distinct account of his negociations.

As things soon after were evidently tending to the restoration of Charles II. Colonel Sydney wrote thus

as farre as I can, without breaking the rules of honour or conscience; which I am sure will neuer be expected from me by your lordship, nor thoes whoes opinions I consider. While I am heare, I serue England, and will, with as much care and diligence as I can, endeauour to aduance its interests, and followe the orders of thoes that gouerne it. I reserue the determination of other points to councells upon the place."

In another letter, dated at Stockholm, June 16th, 1660, he writes...." I am now at the utmost point of my iourney northward, and have nothing more in my thoughts, then to returne into England with as much expedition as I can, accordingly to the liberty granted unto my colleage and me by the Councell of State. We could not think it at all reasonable, to leaue the work in which wee were employed, when wee sawe a certainety of accomplishing it within a short time, unlesse wee had receaued a positiue command: now the peace is concluded, I think we may very well iustify making use of that concession. I am heare alone: my colleague intended to make the same iourney, but the gout confined him unto his bed. I looke upon all the powers granted unto us, as extinguished by the comming in of the King, and doe not take upon me to act any thing as a publique minister, except it be giuing notice unto the crownes of Sweden and Denmark, of the restitution of the auncient gouernment in England, and the proclaiming of the King. Vpon this occasion I accept of a publique audience, which is heare offered unto me;

I should haue auoided it upon all other occasions.... I am detained heare somme dayes longer then I did expect; the Queene and Senate hauing bin out of towne when I arriued heare. I doe not at all knowe in what condition I am theare [in England] nor what effects I shall find of Generall Monk, his expressions of kindnesse towards me, and his remembrance of the auncient friendship that was between us; but the Lord Fleetwood's letters to the Senate and priuate persons here, mention discourses that he makes much to my aduantage. I doe receaue neither more nor lesse ciuility heare then is ordinary, unlesse the excuses I receaue for receauing noe more may deserue that name. I am in priuate told, they feare to offend the King by any extraordinary expressions towards me: your lordship may easily imagine how powerful that consideration will be, when thoes in my condition can pretend to no ciuilityes upon any other account, but as they are respects unto theire superiors and masters."

His father's answer to him, dated at London, August 30, the same year, was as follows.*

"Disuse of writing, hath made it uneasy to me; age makes it hard; and the weakness of sight and hand makes it almost impossible. This may excuse me to every body, and particularly to you, who have not invited me much unto it; but rather, have given me cause to think, that you were willing to save me the labour of writing, and yourself the trouble of reading my letters. For after you had left me sick, solitary and sad, at Penshurst; and that you had resolved to undertake the employment, wherein you have lately been; you neither came to give a farewell, nor did so much as send one to me, but only writ a wrangling letter or two about money, &c.... And though, both before and after your going out of England, you writ to divers other persons; the first letter that I received from you was dated, as I remember, the 13th of September; the second in November; wherein you take notice of your mother's death: and, if there were one more, that was all, until Mr. Sterry came; who made such haste from Penshurst, that coming very late at night, he would not stay to dine the next day, nor to give me time to write. It is true, that since the change of affairs here and of your condition there, your letters have been more frequent. And if I had not thought my

* Familiar Letters written by John, late Earl of Rochester, and other persons of honour and quality.

silence better, both for you and myself, I would have written more than once or twice to you. But though for some reasons I did forbear, I failed not to desire others to write unto you; and with their own, to convey the best advice, that my little intelligence and weak judgment, could afford; particularly, not to expect new authorities nor orders from hence; nor to stay in any of the places of your negociation; nor to come into England; much less, to expect a ship to be sent unto you; or to think, that an account was or could be expected of you here, unless it were of matters very different from your transactions there: that it would be best for you, presently to divest yourself of the character of a public minister; to dismiss all your train; and to retire into some safe place, not very near nor very far from England, that you might hear from your friends sometimes. And for this I advised Hamburgh, where I hear you are, by your man Powel, or by them that have received letters from you, with presents of wine and

having for myself no other design, than to pass the small remainder of my days innocently and quietly; and, if it pleases God, to be gathered in peace to my fathers. And concerning you, what to resolve in myself, or what to advise you, truly I know not; for you must give me leave to remember, of how little weight my opinions and counsels have been with you, and how unkindly and unfriendly you have rejected those exhortations and admonitions, which, in much affection and kindness, I have given you upon many occasions, and in almost every thing, from the highest to the lowest, that hath concerned you: and this you may think sufficient to discourage me from putting my advices into the like danger. Yet somewhat I will say: and first, I think it unfit, and perhaps as yet unsafe, for you to come into England; for I believe Powel hath told you, that he heard, when he was here, that you were likely to be excepted out of the general act of pardon and oblivion: and though I know not what you have done or said here or there, yet I have several ways heard, that there is as ill an opinion of you, as of any, even of those that condemned the late King. And when I thought there was no other exception to you, than your being of the other party, I spoke to the General in your behalf, who told me that very ill offices had been done you; but he would assist you as much as justly he could. And I intended then also to speak to somebody else; you may guess whom I mean; but since that, I have heard such things of you, that in the doubtfulness only of their being true, no man will open his mouth for you. I will tell you some

passages, and you shall do well to clear yourself of them. It is said that the University of Copenhagen brought their album unto you, desiring you to write something therein; and that you did "scribere in albo" these words,

".....Manus haec inimica tyrannis
"Ense petit placidam sub libertate quietem."

and put your name to it. This cannot chuse but be publicly known, if it be true. It is also said, that a minister, who hath married a lady Laurence, here at Chelsea, but now dwelling at Copenhagen, being there in company with you, said, "I think you were none of the late King's judges, nor guilty of his death," meaning our King. * "*Guilty! said you, do you call that guilt? why, it was the justest and*

* *(Guilty! said you, do you call that guilt?)*

.....I confesse, this were a worke, and I hope it will be found fit for the divine pen of that second Saint Peeter the Lord Bishop of London, who followed this martyred King, and king of Martyrs to that block whereon his ever blessed head made a sacred crosse, and the nearest to that whereon the celestial king dyed

bravest action that ever was done in England or any where else," with other words to the same effect. It is said also, that you having heard of a design to

How he was betrayed and pursued, is witnessed by and in the yeares 1639, 40, 41, 42, 43, 44, and 45. How he fled from one sinfull nation to another wicked people, is recorded to the living infamy of the ever trayterous Scots in the year 46. How he was sold at a price by the said accursed Scots, to his cruel and causelesse enemies the Jewish English, is registred in the year 47. How he was tossed between Herod the damned Independent, and Pilate the devilish Presbyterian; and between them againe delivered to the tumults of the said accursed Jews to be crucified, is manifested in the year 48. How he was arraigned, condemned, buffeted, spit upon, and crucified by the conspiring scum of his own rebellious people, not once opening a mouthful of revenge against them, is yet written against them in letters of that sacred bloud, which from his blessed neck hasted over his divine head to advance his everlasting title CHARLES OF BRITAINE KING OF THE JEWS. And this was engraven upon the even adamantine hearts of his bitter adversaries on that most sorrowful day to us, but ever blessed to his majesty, Tuesday, January 30, 1648. How they parted his rayment amongst them, and cast lots upon his vesture, is witnessed by that furrier, to whom they sold his Majestie's rich sables gowne, because they would not injure their own profit. Thus farre his sufferings went along with his Saviour's, etc. etc. etc.

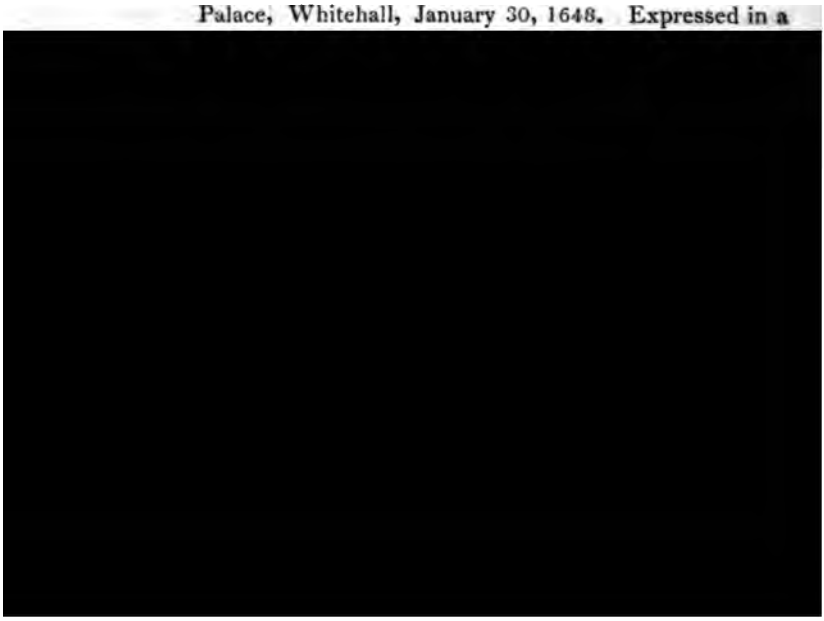
The Royal Legacies of Charles, the first of that name, of Great Britaine, France, and Ireland, KING and MARTYR, to his persecutors and murderers. Being a short paraphrase upon his Majestie's most christian and most charitable speech, delivered immediately before his *translation.* Dedicated to his Majestie's loyal and disconsolate subjects....Printed in the year 1649, in quarto.

..... But now *the glory is departed from* (our) *Israel, the arke of God is taken,* and how is *England become a widow?* made a

seize upon you, or to cause you to be taken prisoner, you took notice of it to the King of Denmark himself, and said, "I hear there is a design to seize upon

prey unto cruell people and skilfull to destroy, who dayly force and prostitute her unto their wicked purposes. For these things let England, (and every true hearted Englishman) say, *I weep, mine eye, mine eye runneth downe with water, because the comforter* (KING CHARLES) *that should relieve my soul is farre from me. The breath of our nostrils, the anointed of the Lord,* etc. the life of our religion, of our lawes, of our liberties, is taken from us; the image of God's power in supreme authority, indemnity, and inviolability, is taken from us; our phisitian, our nursing father, our comforter, our protectour is taken from us, and, for our sins, was taken in their pits; so that now we want the wings of his protection among these heathen among whom we live; we are now made very slaves unto the worst of heathen, a people without God, without faith, without law, without rule, without reason, without humanity, without all these, and whose unruly will only, is unto all these, etc. etc. etc.

The Subjects sorrow; Or, Lamentations upon the death of Britaine's *Josiah*, KING CHARLES, most unjustly and cruelly put to death by his own people, before his Royal Palace, Whitehall, January 30, 1648. Expressed in a



me; but who is it that hath that design? *Est ce nôtre bandit?*" by which you are understood to mean the King. Besides this, it is reported, that you have

Albeit he was as inferiour to Christ as a man is unto God, the creature unto the immortall Creator; yet was his privilege of inviolability farre more cleare than was Christ's. For Christ was not a temporal Prince, his Kingdome was not of this world, and therefore when he vouchsafed to come into the world, and to become the sonne of man, he did subject himselfe unto the law; hee, who only could choose when to be borne, made choise to be borne at that time when there was a decree for taxing all the world, that so soone as he was borne he might be enrolled a subject unto Cæsar; he lived as a subject, payed tribute unto Cæsar; he submitted unto Pilat's jurisdiction, acknowledging that hee had power given him from above. But our gracious Soveraigne was well knowne to be a temporal Prince, a free monarch, and their undoubted Soveraigne, to whom they did all owe and had sworne allegiance; and therefore he could not be judged by any power on earth. He disclaimed their authority, as he well might; for they had no power at all over any, much lesse over him. And what power they usurped, was not *de super*, as Pilat's, but *de subter*, from beneath, even from the angel of the bottomlesse pit, whose name is Abaddon; for as he seeks the destruction of all men, so especially of Kings, because by their government peace is preserved, justice executed, and religion maintained. But from above they had no power; for God never gave unto the people power over their King; as is evident by scripture, by the law of nature and nations, by the knowne lawes of England, by cleare and undeniable reasons, and by the constant doctrine and practice of the true ancient catholic church. And yet those monstrous traytors, have sacrilegiously invaded God's throne, and usurped his office, whose peculiar it is to be judge of Kings; and so have ventured to try, judge, condemne, and execute their King, in despite of all law, reason, religion, nature and God himselfe, ect. etc. etc.

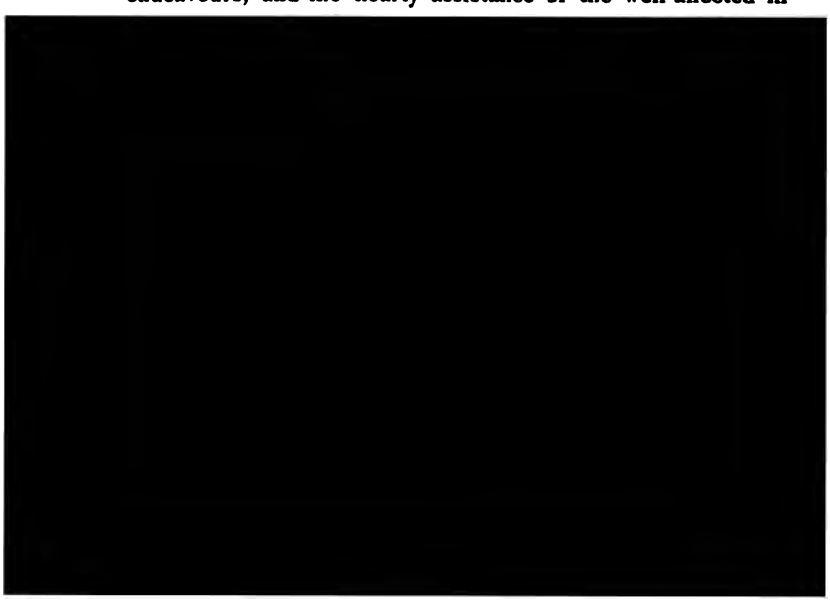
The Martyrdome of King Charles: Or his conformity

been heard to say many scornful and contemptuous things of the King's person and family, which, unless you can justify yourself, will hardly be forgot-

with Christ in his sufferings. In a sermon on 1 Cor. ii. 8. (Which none of the princes of this world knew: for had they knowne it, they would not have crucified the Lord of Glory.) Preached at Bredah, before his Majesty of Great Britaine and the Princesse of Orange. By the Bishop of Downe, June 3d and 13th, 1649. Christiani nunquam sunt inventi Cassiani....Tertull. Hague, printed 1649, in quarto.

Extracts of Restoration, and anniversary thirtieth of January sermons, might have been likewise added, but these shall suffice.

The Parliament of England, elected by the people whom they represent, and by them trusted and authorized for the common good, having long contended against tyranny, and to procure the well-being of those whom they serve, and to remove oppression, arbritrary power, and all opposition to the peace and freedom of the nation; do humbly and thankfully acknowledge the blessing of Almighty God upon their weak endeavours, and the hearty assistance of the well-affected in



ten; for such personal offences make deeper impressions, than public actions, either of war or treaty. Here is a resident, as he calls himself, of the King

people; who chose one to that office for the protection and good of them who chose him, and for their better government, according to such laws as they did consent unto. And let those who have observed our stories, recollect how very few have performed the trust of that office with righteousness and due care of their subjects' good. And how many have made it their study and labor, to satisfie their particular ambition and power, with high pressures and miseries upon their subjects; and with what horrid prodigality of Christian blood, upon punctilios of their own honor, personal titles and estates. And in the whole line of them, how far hath the late king exceeded all his predecessors, in the destruction of those whom they were bound to preserve; and in stead of spreading his protection to all, scarce permitting any to escape the violence of his fury.

To manifest this truth, it will not be improper to take a view of some passages in his reign, wherein he much further out-went all his forefathers in evil, than any example can be found of punishment, etc. etc. etc.

A declaration of the Parliament of England, expressing the grounds of their late proceedings, and of settling the present government in the way of a free state.... London, printed March 22, 1648, in quarto.

The Parliament likewise pulled down the king's statutes at the west end of St. Paul's and in the Royal Exchange, causing the following inscription to be placed in the nich of the latter,

EXIT. TYRANUS. REGVM. VLTIMVS
ANNO. LIBERTATIS. ANGLIAE. RESTITUTAE. PRIMO
ANNO. DOM. MDCXXXXVIII. JAN. XXX.

May it please your lordship, my lord president, and this high court, erected for the most comprehensive, impartial, and

of Denmark, whose name I hear is Pedcombe; he hath visited me, and offered his readiness to give you any assistance in his power or credit, with the

glorious piece of justice, that ever was acted and executed upon the theatre of England, for the trying and judging of Charles Stuart, whom God in his wrath gave to be a king to this nation, and will, I trust, in great love, for his notorious prevarications and blood-guiltiness, take him away from us; he that hath been the original of all injustice, and the principal author of more mischiefs to the free-born people of this nation, than the best arithmetician can well enumerate, stands now to give an account of his stewardship, and to receive the good of justice, for all the evil of his injustice and cruelty. Had he ten thousand lives, they could not all satisfie for the numerous horrid, barbarous massacres of myriades and legions of innocent persons, which by his commands, commissions, and procurements (or at least all the world must needs say, which he might have prevented; and he that suffers any man to be killed, when he may save his life without danger of his own, is a murtherer) have been cruelly slain, and inhumanely murthered, in this renowned Albion; Anglia hath been made an Aceldama, and her younger sister Ireland a land of ire and misery. But now to dissect the charge, etc. etc. etc.

ambassador, Mr. Alfield, who was then expected, and is now arrived here, and hath had his first audience. I have not seen Mr. Pedcombe since; but

sertion) appears to be very extravagant, and eccentrical to all principles both of reason and religion. Such an unaccountable officer, (as the said declaration well expresseth it) were a strange monster to be permitted by mankind. For if the main ground of erecting public administrations of justice and courts of human judicature, in all politics and states whatsoever, be, both in reason and religion, to secure and protect those, who live justly and peaceably, against the violence and injustice of oppressours and unjust men; it must needs be contrary unto both, to exempt such persons from the jurisdiction of these courts and administrations, who have always the greatest opportunities and temptations, and, for the most part, the strongest bent of disposition and will, to practise such unrighteousnesse and oppression, etc. etc. etc.

The Obstructours of justice. Or a defence of the honorable sentence passed upon the late King by the high court of justice. Opposed chiefly to "The serious and faithful representation and vindication of some of the Ministers of London." As also to "The humble addresse of Dr. Hammond, to His Excellencie and councel of "Warre," etc. By John Goodwin....London, 1649, in quarto.

.....Hactenus, quod initio instituëram ut meorum civium facta egregia contra insanam et lividissimam furentis sophistae rabiem, et domi et foris defenderem, jusque Populi commune ab injusto regum dominatu assererem, non id quidem regum odio, sed tyrannorum, Deo bene juvante videor jam mihi absolvisse: neque ullum sine responso vel argumentum, vel exemplum, vel testimonium ab adversario allatum sciens praetermisi, quod quidem firmitatis in se quicquam, aut probationis vim ullam habere videretur: in alteram fortasse partem culpae proprior, quòd saepiusculaè ineptiis quoque ejus, et argutiis tritis-

within a few days, I will put him in mind of his profession of friendship to you, and try what he can or will do. Sir Robert Honeywood is also come hither;

simis, quasi argumentis, respondendo, id iis tribuisse videar, quo dignae non erant. Unum restat, et fortasse maximum, ut vos quoque, *o Cives*, adversarium hunc vestrum ipsi refutetis; quod nulla ratione video posse fieri, nisi omnium maledicta vestris optimè factis exuperare perpetuo contendatis. Vota vestra et preces ardentissimas Deus, cum servitutis haud uno genere oppressi, ad eum confugistis, benignè exaudiit. Quae duo in vita homi num mala sanè maxima sunt, et virtuti damnosissima, tyrannis et superstitio, iis, *vos gentium primos*, gloriosè liberavit; eam animi magnitudinem vobis injectit, ut devictum armis vestris et deditium regem judicio inclyto judicare, et condemnatum punire primi mortalium non dubitaretis. *Post hoc facinus tam illustre, nihil humile aut augustum, nihil non magnum atque excelsum et cogitare et facere debebetis.* Quam laudem ut assequamini, hac sola incedendum est via, si ut hostes bello domuistis, ita ambitionem, avaritiam, opes, et secundarum rerum corruptelas, quae subigunt caeteras gentes hominum, ostenderitis vos etiam inermes medi in pace omnium mortalium fortissime debellare; si, quam in repellenda servitute fortitudinem praestitistis, eam in libertate conservanda justitiam, temperantiam, moderationem praestiteritis. His solis argumentis

and as I hear, the King is graciously pleased to admit him to his presence; which will be somewhat the better for you; because then the exceptions against

..... Now therefore, right honorable! when I look upon you, and behold you more highly intrusted than kings, and far more nobly adorned, upon a better ground than they were, with all the rights, interests, and privileges of the people; when I consider how God hath wrested the sword out of their hands, and placed it in yours for our protection, with the conservation of our peace and liberties, and made you the happy instruments of freeing us from the yoke of kings; when I call to minde, how nobly you asserted the rights of England against domestic tyrannie, upon the neck of the late king, and laid the foundation of our freedom upon the highest act of justice; (when justice sat more gloriously inthroned than ever it did before on any earthly tribunal) I am raised with more than ordinarie confidence, that the same spirit of justice, which actuated you in your former atchievements for our establishment by land against him and his posteritie, will carry you on, as you have begun, to vindicate those rights by sea against all foreign violations and invasions. It is your honor, that God hath made you founders of the most famous and potent republic this day in the world; and your felicitie, that all your enemies have no other ground of quarrel, but that you are a republic: for though these Netherlanders speak it not out in words, yet they have often told you so in behaviour, etc.

Of the dominion, or ownership of the sea, two books. Written at first in Latin, and intituled, "Mare Clausum, seu De Dominio Maris." By John Selden. Translated into English; and set forth with some additional evidences and discourses, by Marchamont Nedham. Published by special command....London, printed by William Du Gard, 1652, in folio.

Marchamont Nedham was author of divers curious and very scarce tracts; and of that celebrated journal, intitled "*Mercurius Politicus*, comprising the summe of all intelligence; with the affairs and designs now on

your employment and negociation, wherein you were colleagues, will be removed, and you will have no more to answer for, than your own particular beha-

foot in the three nations of England, Ireland, and Scotland. In the defence of the commonwealth, and for information of the people." It commenced June 9, 1649, went forth once a week, ended April 1660, and was published by authority of the council of state.

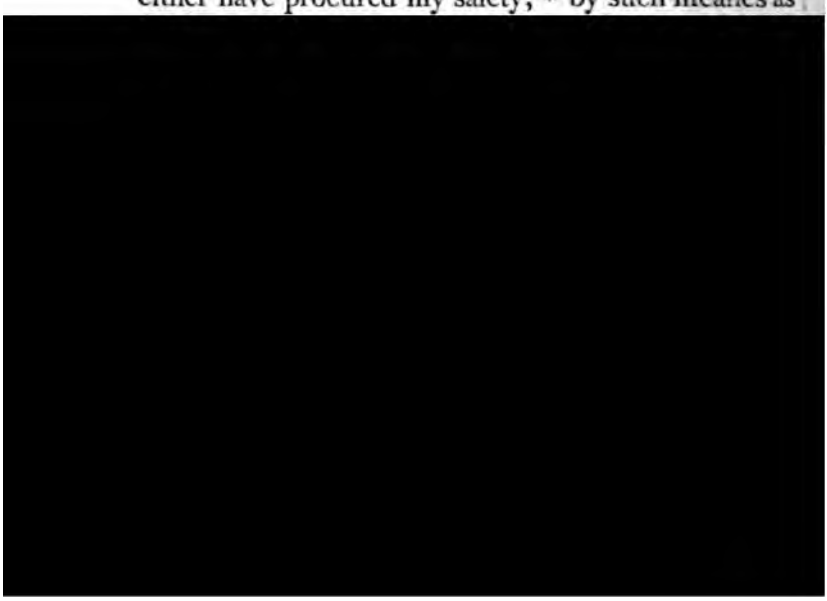
The act for the militia being passed, the command of all the forces and garrisons settled on Monk, and the fleet in his power in conjunction with Colonel Montague; the pretended parliament authorized their council of state to provide for the public safety on all emergencies, and to dispose affairs as they should think fit till the meeting of the next Parliament: which being done, and the house ready to pass the act for their own dissolution; Mr. Crew, who had been as forward as any man in beginning and carrying on the war against the late king, moved, that before they dissolved themselves, they would bear their witness against the horrid murder, as he called it, of the king. This unexpected motion prevailed with many then present to deny their concurrence to that act against the king, though not to reflect in the same manner on those who had been concerned

viour. I believe Sir Robert Honeywood will be industrious enough, to procure satisfaction to the merchants in the business of money; wherein he will have the assistance of Sir John Temple, to whom I refer you for that and some other things. I have little to say to your complaints of your sister Strangford's unequal returns to your affection and kindness; but that I am sorry for it, and that you are well enough served for bestowing so much of your care where it was not due, and neglecting them to whom it was due; and I hope you will be wiser hereafter. She and her husband have not yet paid the thousand pounds, whereof you are to have your part by my gift; for so, I think, you are to understand it, though your mother desired it: and if, for the payment thereof, your being in England, or in some place not far off, be necessary, as some pretend, for the sealing of some writings, I think that and other reasons sufficient to persuade you to stay a while where you are, that you may hear frequently from your friends and they from you. I am wholly against your going into Italy as yet, till more may be known of your condition, which, for the present, is hard; and I confess that I do not yet see any more than this, that either you must live in exile, or very privately here and perhaps not safely; for, though the bill of indemnity be lately passed, yet if there be any particular and great displeasure against you, as I fear there is, you may feel the effects thereof from the higher powers, and receive affronts from the inferior. Therefore you were best to stay at Hamburgh, which, for a northern situation, is a good

place and healthful. I will help you as much as I can, in discovering and informing you of what concerns you; though, as I began, so I must end, with telling you, that writing is now grown troublesome to your affectionate Leicester."

But Colonel Sydney did not continue long at Hamburgh; for he was at Frankfort upon the Main, on the 8th of September, 1660, from whence he wrote to his father, being determined then for Italy: and we find him at Rome in November following, whence he wrote likewise to his father, on the 19th of that month.

"I think the councell given me by all my friends to keepe out of England for a while, doth too clearely appeare to have bin good, by the usage my companions have already receaved, and perhaps will be yet further verified by what they will find. Nothing doth seeme more certaine to me, then that I must either have procured my safety, * by such meanes as



Sir Arthur Haselrigge is sayed to have used; or runne the fortune of somme others, whoe have shewed themselves more resolute. I hope my being here, will in a short time shewe that the place was not ill chosen, and that besides the liberty and quiet which is generally granted to all persons here, I may be admitted into that company, the knowledge of which will very well recompence my iourney. I was extreamely unwilling to stay in Hamburg or any place in Germany, finding myself too apt to fall too deepe into melancholy, if I have neither businesse nor company to divert me; and I have such an aversion to the conversation and entertainements of that country, that if I had stayed in it I must have lived as a hermite, though in a populous citty. I am here well enough at ease, and believe I may continue soe. Unlesse somme boddy from the court of England doth think it worth theire paines to disturb me, I see nothing likely to arise here to trouble me. I have already visited severall cardinalls. To morrowe I intend to pay the same respect to the cardinal Ghigi, nephew to the Pope. He hath already granted me

secure him in his life and estate, and doubted not to effect it. This being made known at a following conference by the House of Commons, was justified with great modesty by the Duke of Albemarle in the House of Peers, and his life was thereupon pardoned in the act; and a small time after his estate also was, at the mediation of the Duke, granted to his heir, a man averse to his father's disloyal principles, Sir Arthur himself a while after his imprisonment dying of a fever in the tower.

Bishop Kennet's hist. reg. p. 136.

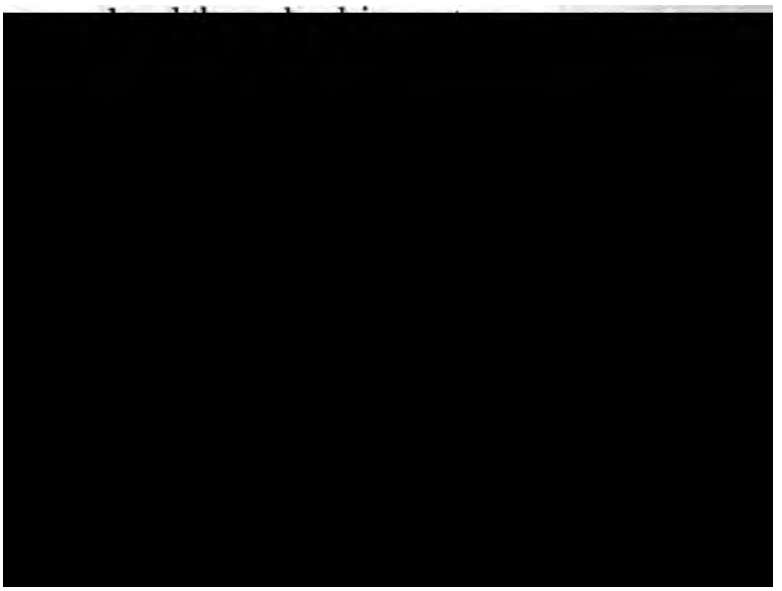
the liberty of waiting upon him, which was signified unto me by an other eminent person of the same robe and degree. They are all generally civill, and I ask no more.'

His correspondence with his father during his stay at Rome, will be seen in the letters taken from the Sydney papers, now first added, with the letters to Mr. Savile and his tryal, to this edition.

Several of his friends having been importunate with him for his return to England, he wrote * the following letter; but the want of date makes the particular time of writing it uncertain.

'SIR,

'I AM sorry I cannot in all things conform myself to the advices of my friends. If theirs had any joint concernment with mine, I should willingly submit my interest to theirs; but when I alone am interest-

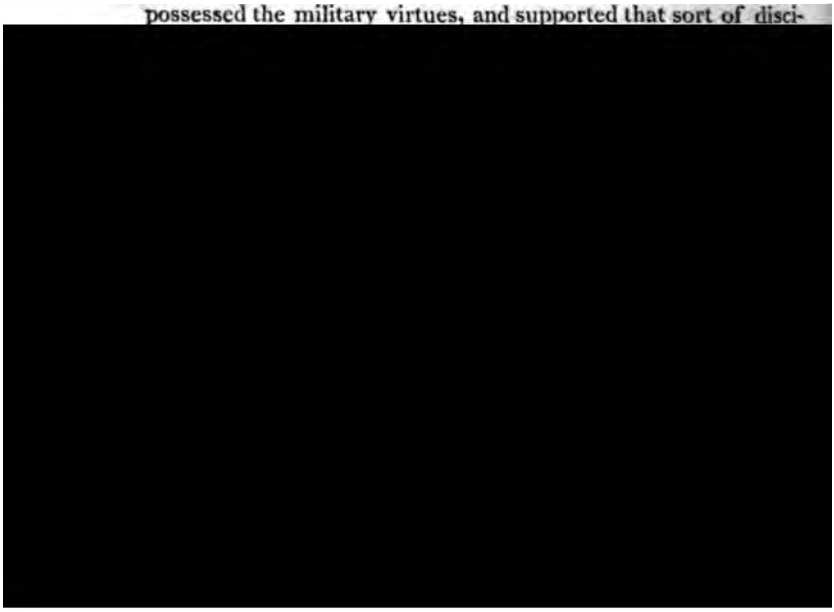


liberty which we hoped to establish, oppressed; luxury and lewdness set up in its height, instead of the piety, virtue, sobriety, and modesty, which we hoped God, by our hands, would have introduced; the best of our nation made a prey to the worst; the Parliament, court, and army, corrupted; the people enslaved; all things vendible; no man safe, but by such evil and infamous means, as flattery and bribery; what joy can I have in my own country in this condition? Is it a pleasure to see, that all I love in the world is sold and destroyed? Shall I renounce all my own principles, learn the vile court arts, and make my peace by bribing some of them? Shall their corruptions and vice be my safety? Ah! no; better is a life among strangers, than in my own country upon such conditions. Whilst I live, I will endeavour to preserve my liberty; or at least, not consent to the destroying of it. I hope I shall die in the same principles in which I have lived, and will live no longer than they can preserve me. I have in my life been guilty of many follies; *but*, as I think, *of no meanness*. I will not blot and defile that which is past, by endeavouring to provide for the future. I have ever had in my mind, that when God should cast me into such a condition, as that I cannot save my life but by doing an indecent thing, he shews me the time is come wherein I should resign it: and when I cannot live in my own country but by such means as are worse than dying in it, I think he shews me, I ought to keep myself out of it. Let them please themselves with making the king glorious, who think a whole people may justly be sacrificed for the

interest and pleasure of one man, and a few of his followers; let them rejoice in their subtilty, who by betraying the former powers, have gained the favour of this, not only preserved, but advanced themselves in these dangerous changes. Nevertheless, perhaps they may find, the king's glory is their shame; his plenty the people's misery; and that the gaining of an office or a little money, is a poor reward for destroying a nation, *which, if it were preserved in*

(* *Which, if it were preserved in liberty and virtue,*)

And now that I am fallen unawares into such profound reflections on the periods of government, and the flourishing and decay of liberty and letters; I cannot be contented to consider merely of the inchantment which wrought so powerfully upon mankind, when first this universal monarchy was established. I must wonder still more, when I consider how after the extinction of this Cesarian and Claudian family, and a short interval of princes raised and destroyed with much disorder and public ruin, the Romans should regain their perishing dominion and retrieve their sinking state, by an after race of wise and able princes successively adopted, and taken from a private state to rule the empire of the world. They were men who not only possessed the military virtues, and supported that sort of disci-



liberty and virtue, would truly be the most glorious in the world; and that others may find, they have with much pains purchased their own shame and misery, a dear price paid for that which is not worth

the empire. All the advantage which a fortuitous and almost miraculous succession of good princes could procure their highly favoured arts and sciences, was no more than to preserve, during their own time, those perishing remains which had for a while with difficulty subsisted, after the decline of liberty. Not a statue, not a medal, not a tolerable piece of architecture could shew itself afterwards. Philosophy, wit and learning, in which some of these good princes had themselves been so renowned, fell with them. And ignorance and darkness overspread the world, and fitted it for the chaos and ruin which ensued.

The Earl of Shaftsbury, in his "Advice to an Author."

From their railleries of this kind on the barbarity and misery of our island, one cannot help reflecting, on the surprising fate and revolutions of kingdoms. How Rome, once the mistress of the world, the seat of arts, empire and glory, now lies sunk in sloth, ignorance and poverty; enslaved to the most cruel, as well as the most contemptible of tyrants, superstition and religious imposture. While this remote country, evidently the jest and contempt of the polite Romans, is become the happy seat of liberty, plenty, and letters; flourishing in all the arts and refinement of civil life; yet running, perhaps, the same course which Rome itself had run before it; from virtuous industry to wealth; from wealth to luxury; from luxury to an impatience of discipline and corruption of morals; till by a total degeneracy and loss of virtue, being grown ripe for destruction, it falls a prey at last to some hardy oppressor, and with the loss of liberty, losing every thing else that is valuable, sinks gradually again into its original barbarity.

Dr. Conyers Middleton, the excellent, in his "Life of Cicero," vol. 1. p. 494.

keeping, nor the life that is accompanied with it. The honour of English parliaments hath ever been in making the nation glorious and happy, not in selling and destroying the interest of it, to satisfy the lusts of one man. * Miserable nation! that from so

(* *Miserable nation! that from so great a height of glory,)*

The English republicans took things exactly right; and that in order to the accomplishing of a design that would take up all their lifetime, (for such men ought never to conceive mean ones, after the execution whereof they must be put to the trouble of projecting anew, or live lazily and be exposed to conspiracies against them) they thought it would be their best way to begin with the destruction of the United Provinces, which lay next their coasts, and flourished in trade above any other country in the world; and when once they had effected this, they were in hopes they should easily remove any obstacle in their way to attain the dominion of the seas; insomuch, that if the fortune of war should favour their first enterprize, I do not think they have any design to make a peace with a nation they have a mind utterly to destroy, and to whom they will propose such hard terms, that upon the refusal of them, you will at last find them prepared to make terrible descents in divers parts of Zealand and North-Holland, to break the banks and the other dikes, that keep the flat country from being drowned.

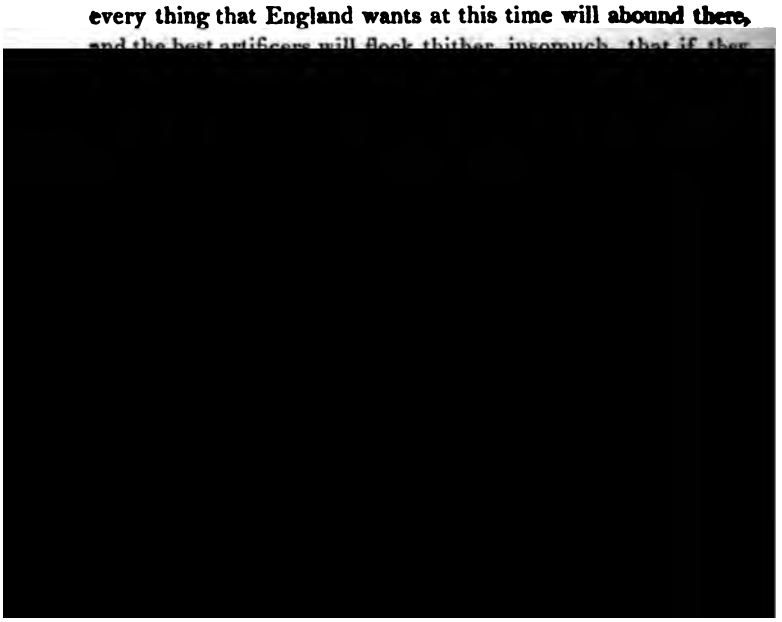
great a height of glory, is fallen into the most despicable condition in the world; of having all its good depending upon the breath and will of the vilest per-

to be transported any where but in English bottoms: for it would be very easy for them to stop up the mouths of the ports, and to go up the Schelde, even in sight of Antwerp, from whence nothing must come out but will be taken by their ships. By this means, and the notion I have of their designs, no nation in the world, in a few years time, would have any seamen, ships, or skill in maritime affairs, besides themselves: for Holland being intirely ruined, the Dutch must serve on board their fleets, and all the shipwrights, sailmakers, and ropemakers, would be obliged to go and earn their living in the sea-port towns of England; and this they would be the more inclined to do, because there is more wages given there, and people live better. When this noble and rich province, which within the extent of less than five and twenty leagues, contains eighteen large towns and four hundred villages, of which the Hague is the finest in the world, shall be reduced to this sad plight; it is then likely that the English will turn their arms against Denmark, in order to seize the passage of the Sundt, either by main force or rather some treaty, by which they will be willing to give the King more than the profit it brought him, but at the same time will oblige Norway to sell their wood to no other nation but the English.... The cities of Embden, Bremen, Hamburg, Lubeck, all the coast of the Baltick, and the whole kingdom of Sweden, durst appear no longer at sea, but under English colours; and perhaps the formidable republic will be content, in consideration of her commissions granted to them, to receive certain duties from the goods she allows them in her name to transport, only along these northern parts. They will in time send a more powerful fleet to block up the river of Lisbon; while another sails to Brazil, Guinea, and the East-Indies; with a design to spare the Portuguese merchants and the East-India Companies, the labour of transporting the sugars, silks, spices, and other commodities they come hither for, into Europe: and if Spain pre-

sons in it! cheated and sold by them they trusted! Infamous traffick, equal almost in guilt to that of Judas! In all preceding ages, parliaments have been

tends to say any thing against them, they will, without any more ado, seize the Streights' mouth and send an hundred and fifty ships of war into the Mediterranean, out of which they can very easily drive the naval force of the other potentates of Europe, were they all joined together against them.

The English having in this manner usurped the dominion of the seas, the trade of all the European nations, and part of the rest of the world; all the earth must submit to them, work for nobody but them, and they will, from time to time, come into their ports, and sweep away all their treasure: every thing that is rare and all the conveniences of life, produced either by art or nature, will be reserved for England, which will be the only country that can purchase them or possess them of her own.... For, as we see, that since the settling of trade in Holland, that province is become the store-house for linen, woollen, and all sorts of manufactures, though there is neither flax, wool, nor, in any manner, any other commodities which they work up, grows there, but they must have them from other countries; so every thing that England wants at this time will abound there, and the best artificers will flock thither, insomuch that if they



the palace of our liberty; the sure defenders of the oppressed: they, who formerly could bridle kings, and keep the balance equal between them and the

at Amsterdam, and then sold them at very dear rates in those places from whence they were first brought, and where there is not perfection of workmanship as there is with us. Hundreds of ships richly laden will daily put into the Thames and other ports of this fortunate island; and the General can scarce ever lose sight of his forces, which, I may say, return every evening to lye at home; for they stay no longer in foreign parts than to refresh themselves, to vend their goods, and to take in new cargoes.. They will be no ways solicitous of making conquests by land, that they may save the charge of maintaining them, seeing they are sure of reaping the profit of them; neither will they plant any colonies and ease their country, as populous as it is grown, of the vast multitudes that are in it, because the whole produce of Europe is consumed there, and their great naval trade renders their stores inexhaustible. In the mean time all the neighbouring kingdoms will, in a manner become like the sea coasts of America, where our Europeans trade; there will be only tillage and some coarse manufactures for plain wear and to serve people's necessities only in the heart of the country, and the maritime towns will be no other than the granaries of England ....

There is nothing in all the conquests of Alexander, and the pomp of the Roman Empire, that comes near this maritime dominion which I have represented to you. And this seems to be so very feasible, that if Holland be once ruined, I am afraid it will be too late to prevent it. And therefore I would have all the potentates of Europe take it to heart in time; for if they do not quickly put an end to the war they are engaged in on the continent, we shall run the risque, in a few ages, of becoming perfect barbarians. For the English, by the means of their navigation, will transfer all the politeness of Europe, to-

people, are now become instruments of all our oppressions, and a sword in his hand to destroy us; they themselves led by a few interested persons, who

gether with its plenty, power and conveniencies of life, into their own country.

Extract of a letter from M. Sorbiere to M. de Courcelles, at Amsterdam; dated Orange, July 1, 1652: Concerning the designs of the English in the war against the Dutch.

We have done this right unto our monarchy.

We are now to say something of that government which succeeded it. I confess it was never settled, nor put absolutely into the hands of the people. And yet if you respect its infancy and beginning, it outwent in warlike atchievements all other commonwealths. I lay before me the exploits of Sparta, Athens, Carthage, and Venice; and know that the Venetians, Switzers, and United Provinces, at this day being contemptible for territories, are those only that appear fittest matches for the greatest empires, namely the Turk, the German, and the Spanish house of Austria, which monarchs had overborn large kingdoms, and provinces, and could meet none able to measure

are willing to buy offices for themselves, by the misery of the whole nation and the blood of the most worthy and eminent persons in it. Detestable bribes,

monwealth, in that respect, laid on so large and strong a foundation as that then had: and if, in our conceits, we should give it an answerable growth, we could not assign it less than the whole globe at last for its portion.

At first, if you will judge by the affections of the people, it had not the hundredth part of England itself, and was to go through difficulties that would have confounded any but a free state. But how quickly had it brought the nation to somewhat a better understanding, and a fair way of settlement? So that there are some that question, whether any natural prince of England had ever been assisted on any occasion with so great forces, so suddenly and with such alacrity raised, as that was at Worcester? And on the other side, how few went over to the king of the Scots, though looked on as a rightful prince, deserves consideration.

It lived not out a lustre, yet conquered Scotland, (introducing more liberty and greater privileges than they had before) Ireland and several other smaller islands; made other nations feel its force, as the French and Portugal; and was going on in such a career of action as was not to be stopt by a human power. This government began a war with the Dutch, which it had ended with an absolute conquest or fallen in the attempt; and after this probably it would have entered on more honourable enterprizes, and not suffered the nation to grow effeminate by ease and vice. In a word, it had brought in an instant the nation to a full glory and such a splendour, as cast a darkness, as is affirmed by some, on the greatest actions of former times. This is certain, that the neighbouring States trembled at its sudden and prodigious greatness; and remote potentates did court and seek a good understanding from its hands, and its dissolution brought no ordinary content to those that had cause to fear it. The agent from the Stuarts, as a late writer reports, at the first appearance of this free state, urged the United Pro-

worse than the oaths now in fashion in this mercenary court! I mean to owe neither my life nor liberty, to any such means. When the innocence of

vinces, "That if England were free, it would be formidable to them not onely by interrupting their fishing and all other maritime advantages, but by robbing them of traffick as they had done the Venetians; and not onely so, but give law to all Christendom, by reason of the commodiousness of its harbours and multitudes of it ships."

This commonwealth, how imperfect soever in itself, was yet too strong in all likelyhood for any human power or strength to break. It was only capable of being ruined by God and itself. It was indeed quickly dissolved and gone; yet had it this to boast of, that having all along attempted the boldest enterprises, it met with no ill success in any of its great undertakings while it was in being. But

..... Lætis hunc numina rebus,
Crescendi posuere modum .....

Where is the stability of human glory? Who now will not be-

my actions will protect me, I will stay away till the storm be overpassed. In short, * where Vane, Lambert, Haselrigge cannot live in safety, I cannot live

It remains now, that I should speak something of the present government; but the petition of advice coming out since I had finished this discourse, I am forced to put it off till I shall have another opportunity, which, if ever it happen, I shall, God assisting, cheerfully set on it and in a particular manner discourse thereof.

A discourse on the national excellencies of England. By R. H. London printed, 1658, in duod.

I shall conclude with two material passages, which though they relate not immediately to our author, or his own particular concerns, yet in regard they happened during his public employ, and consequently fell most especially under his cognisance, it will not be amiss here to subjoin.

The first was this. Before the war broke forth between the states of England and the Dutch, the Hollanders sent over three embassadours in order to an accommodation; but they returning *re infecta*, the Dutch sent away a plenipotentiary to offer peace upon much milder terms, or at least to gain more time.

But this plenipotentiary could not make such haste, but that the Parliament had procured a copy of their instructions in Holland, which were delivered by our author to his kinsman that was with him to translate for the council to view, before the said plenipotentiary had taken shipping for England; and an answer to all he had in charge lay ready for him before he made his public entry into London.

In the next place there came a person with a very sumptuous train, pretending himself an agent from the Prince of Conde, then in arms against Cardinal Mazarin. The Parliament mistrusting him, set their instrument so busily at work, that in four or five days they had procured intelligence from Paris,

* *Note....See page* 60.

at all. If I had been in England, I should have expected a lodging with them; or though they may be the first, as being more eminent than I, I must ex-

that he was a spy from King Charles; whereupon, the very next morning, our author's kinsman was sent to him with an order of councel, commanding him to depart the kingdom within three days or expect the punishment of a spy.

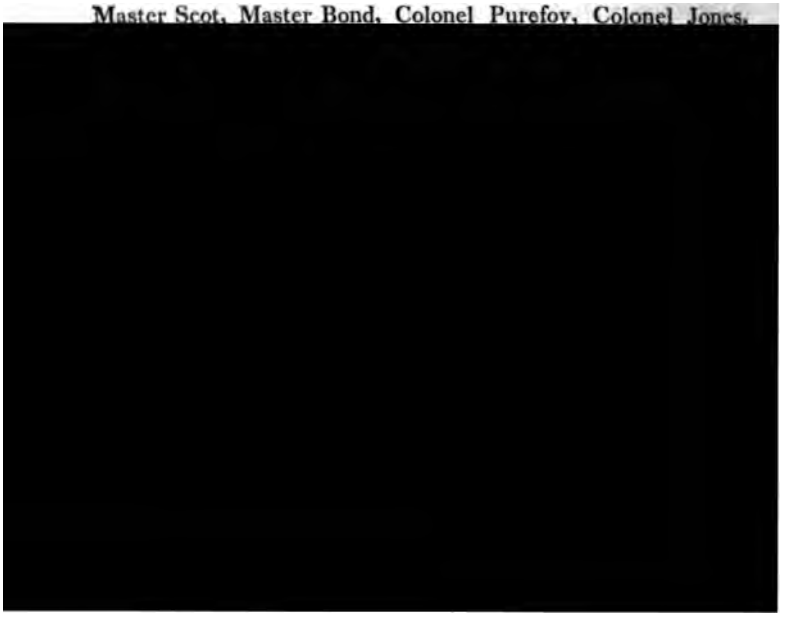
By these two remarkable passages we may clearly discern the industry and good intelligence of those times.

The life of John Milton, (by John Philips his nephew) prefixed to his letters of state....Printed, 1694, in duod.

At a committee of the councell of state at Whitehall, Aug. 16, 1649. Ordered, that a committee bee appointed, to take into consideration the businesse of the coyne and the par betweene it and other nations; and how the coyne of this nation may bee kept from being carried out; and likewise to consider of some meanes whereby the mint may be set to worke; and they are to speak with any persons they think good about it.

The names of the committee for the mint, Dec. 20, 1649:

The Lord President Bradshaw, Sir James Harrington, (who had the chair), Sir Gilbert Pickering, Sir William Constable, Master Scot, Master Bond, Colonel Purefoy, Colonel Jones,



pect to follow their example in suffering as I have been their companion in acting. I am most in a maze at the mistaken informations, that were sent to

don, to treat with him by word of mouth, and to agree about the price of coyning the money of this commonwealth after his way. He being then arrived at London, Sept. 3, 1649, the said council bestowed on him forty pounds sterling; and the late Mr. Frost, then secretary to the said council, told him before witnesses, that if the state could not agree with him about the price and that therefore he should be necessitated to retire himself, the state would indemnifie him for his journie, both coming and returning, and for the time he should have lost, and would bestow on him such a present that he would return satisfied. A while after the said council of state ordered the committee of the council of state for the mint, to hear the said Blondeau's proposition and report it.

The committee for the mint accordingly took it into consideration, whether the said Blondeau should be admitted to coyn the monie of this commonwealth; and having debated it, they resolved and approved that he should be admitted thereunto, provided his coin and his proposition should be advantageous to the state.

Afterwards the said committee having seriously considered and examined all the circumstances of the way of coyning propounded by the said Blondeau; and having heard all the objections that could be alledged against it, both by the master of the mint, or by any other of those who appeared in the business; upon the debate of the whole, the committee concluded and voted, that the said way of coyning propounded by the said Blondeau, was better, more advantageous, and more HONOURABLE for the state, than that which is used now in this commonwealth.

The master, the officers, and the workmen of the mint, told the committee, it was not likely the said Blondeau had done himself the pieces sent by him to the council of state. Besides, that it was an old invention which they themselves knew, and

me by my friends, full of expectation of favours and employments. Who can think that they who imprison them would employ me, or suffer me to live

that such pieces were onely made for curiosity, with very long time and great expence, and that it was impossible that that way might bee used about the ordinary coyn, which is thin. They desired that the said Blondeau might be commanded to make a tryal of his skill, by making some other pieces, and that they would do as much as the said Blondeau. Therefore the said committee ordered, both the said Blondeau and the said workmen, to make their patterns and propositions respectively; and that hee that would make it with most advantage to the state should have the employment.

At the time appointed, the workmen brought to the committee some pieces made after the old way which is known to them, and some big pieces of silver stuffed within with copper; but they had drawn no propositions.

Likewise the said Blondeau brought in about 300 pieces, some half-crowns of theo rdinary weight and bigness, some shillings, six-pences, and some gold pieces, and presented his proposition; which having been reformed according to the pleasure of the said committee, it was received and accepted of by the whole committee, who ordered it to be reported to the council of state.

when they are put to death? If I might live and be employed, can it be expected that I should serve a government that seeks such detestable ways of estab-

engines and great number of tools and men required for making of one piece, the great charges for the engines and tools, and several other things required for making of those counterfeited pieces; they acknowledged, that it would be enough to dis-swade any one from undertaking it, the rich not being willing, and the poor being unable, and that though they should under-take it they could not do it without being discovered. Besides that the mony coyned after the way of the said Blondeau was so thin that it cannot be so counterfeited.

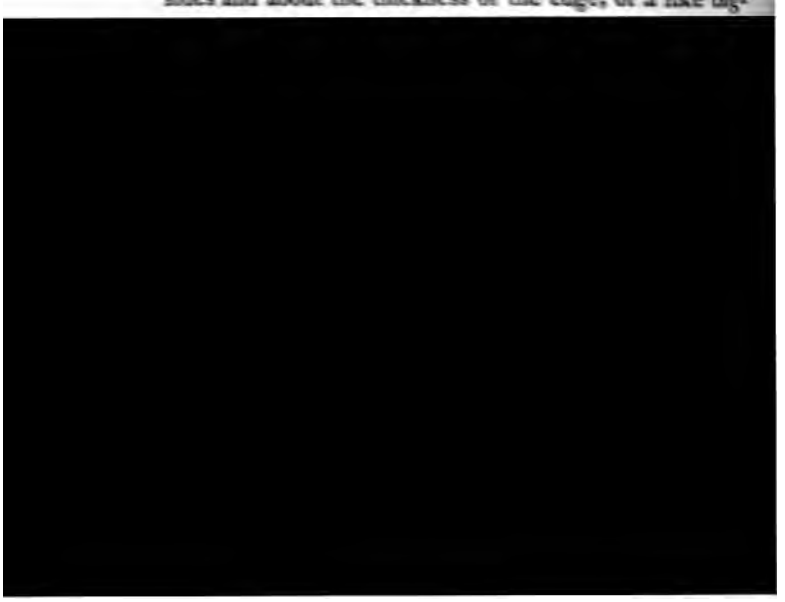
Whereupon it is observable, that the said workmen of the mint, although they made use of the great and heavie engines that are in the tower; yet for making of some tools they had need of, and for the other charges of coining about a dozen of pieces they made then for a pattern, have spent a hundred pound sterling, as hee that pretends to have laid out the money hath said before witnesses.

Afterwards, another order was given by the said committee, and some time limited to the said workmen, to draw and pre-sent their proposition for coyning the monie marked upon the thickness or edge, as that of the said Blondeau is. But after the expiration of the long time demanded by them, they brought such a proposition, the said committee having read it over and over, could not understand it nor the sense of it; and even those that brought it could not explain it: whereby it was apparent to the said committee, that they were not able to make their proposition good, much less to coyn the mony after that way, which they avowed themselves before the said committee.... Yet they intreated the committee to allow them the time of some months more, to finde, if possible, the new invention; and that the said Blondeau's proposition should be communicated unto them, upon which they might frame their own. They further demanded, that the said Blondeau and the graver (Thomas

fishing itself? Ah! no. I have not learnt to make my own peace by persecuting and betraying my brethren, more innocent and worthy than myself. I

Simon, the celebrated T. Simon should have order to bring in all the pieces made by the said Blondeau for a tryal, with the stamps or dies used for making them: all which was granted them upon that condition, that if within the time allowed them, they could finde out the means to coyn the money after the said Blondeau's way, and thereupon he should be sent back, he should be indemnified: which was agreed by all. But they could never finde out the said new invention for coyning the thin and weak pieces after that way with expedition requisite. Yet for all that, they made their propositions, which are in the hands of the chairman of the committee; as are also the said Blondeau's propositions and patterns, about a year and a half since, to be reported by him to the Council of State, etc. etc.

A most humble memorandum from Peter Blondeau. Concerning the offers by him made to this commonwealth, for the coyning of money, by a new invention not yet practised in any state of the world; the which will prevent counterfeiting, casting, washing and clipping the same. Which coin shall be marked on both the flat sides and about the thickness or the edge, of a like big-



live by just means, and serve to just ends, or not at all. After such a manifestation of the ways by which it is intended the King shall govern, I should

state, for the more handsome making of the monies for the honor of this commonwealth.

JAMES HARRINGTON.
THO. CHALONER.

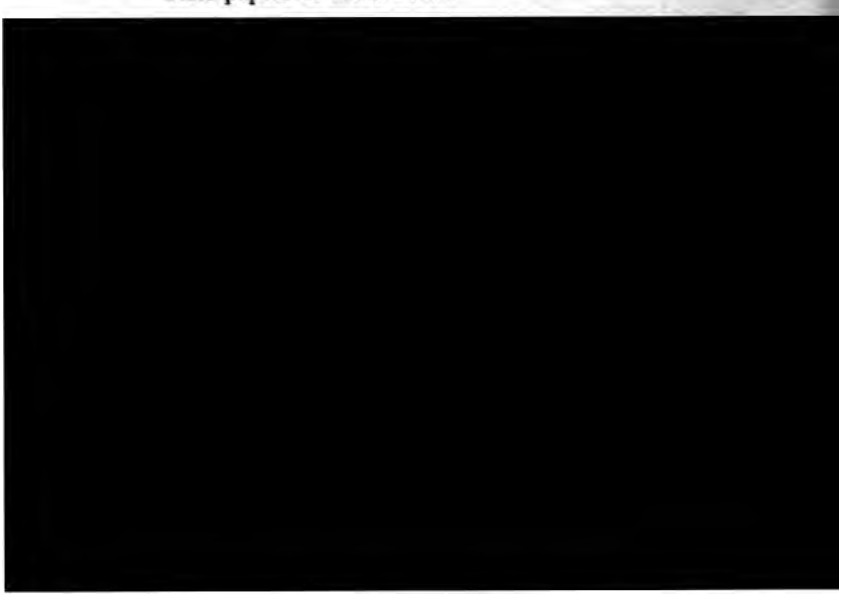
At the desire of Sir James Harrington, Mr. Thomas Chaloner, and others of the honourable committee for the mint, I (Thomas Violet) did write to Holland for all the principal coynes in Christendom; and did deliver many of them to the officers of the mint to make an assay of them: which several pieces of forrain gold and silver were assayed in the presence of the committee of the mint, they being there at the tower several dayes to make these tryals, where I attended them. And I sent into Holland, France and Flanders for all their several placarts; and did procure the lawes and ordinances for regulating their respective mints, with the several standards and weights for their coyns, gold or silver, to be translated. And thereupon the committee of the mint caused the principal of these forrain coynes to be ingraven, with the weight and fineness of every piece, according to the standard of each mint, both gold and silver, what it ought to weigh; with a just calculation of the value what all the several species would make in the tower of London, and the penny-weight and graines that everie such forrain species or coin would make in the tower of London, and what proportion our gold and silver held with the mint of Flanders, France and Holland. And this was exactly calculated by the officers of the mint and myself, in the year 1651 and 1652; and all the proceedings thereupon, after many months time, and the several coynes graven on copper plates, were delivered into the custody of Sir James Harrington, chairman of that committee, to report them unto the house. But the Parliament being dissolved April 20, 1653, the act against transporters of gold, and all the proceedings concerning the regulation of the mint were stopped for that time.

have renounced any place of favour, into which the kindness and industry of my friends might have advanced me, when I found those, that were better than

The above notes relating to the coin, have been taken from Thomas Violet's publications. More of this matter, with specimens of some of the elegant and very scarce pattern-pieces before mentioned, may be seen in "the works of Thomas Simon," published, London, 1753, in quarto, by that ingenious, diligent, faithful English antiquarie, the late Mr. George Vertue.

Cromwell having thrust out the Parliament, his masters, patrons, by his soldiers, as see a singular account of it in Whitelocke, p. 554; he thought proper, in the suite of his ambition, to coin monies, following exactly the rules which had been instituted by the committee of Parliament in their wisdom, and employing the workmen which they had formed, but stamping on those monies impudently his own effigies and arms.

Further, concerning the intended regulation of the law, the universities, commerce, and the general scheme of civil government and views of this Master Parliament; the curious reader will consult "Husband's collections," 1643, in quarto, 1646, in folio; "Scobell's collections," in folio, and the other state papers of those times.



I, were only fit to be destroyed. I had formerly some jealousies; the fraudulent proclamation for indemnity increased them; the imprisoning of those

so maliciously active in opposition to his majesty's government, as to be excepted from any conditions of pardon. The commons for some time adhered to their first resolution, but after several conferences, they agreed with the lords in all things except some little alterations in the frame of the act; Vane and Lambert were excepted, but Haselrigge remained liable to such pains, penalties and forfeitures, as should be inflicted on him, not extending to life; and the rest of those put under the same qualifications by the commons, that were not of the king's judges, were made only with others incapable of offices.

Kennet's hist. register, p. 286.

Sir Henry Vane, whose blood seems to have been demanded by the peculiar vengeance of heaven, had been most deeply engaged in the darkest scenes of the late calamities, which he carried on with infinite subtlety and artifice, to the deception of incredible numbers in the nation; and though he cunningly kept himself from the impious court that condemned the king, it was sufficiently known that none contributed more to the bringing him thither; and after, that none more zealously promoted the establishment of the new commonwealth, and his actions daily discovered so much of republican rancour, that it was impossible for him to live in quiet under any resemblance of monarchy. So after the restoration, having been found tampering with some malecontents of the army and others, in order to fresh disturbances, the government thought fit to confine him: and though he, with Lambert, was particularly excepted in the act of indemnity, yet he found so much favour afterwards from the House of Commons in the same Parliament, that they petitioned the king, in which they were joined by the House of Peers, that he might yet be exempt from suffering the pains of death; to which, as his friends alledge, his majesty consented. This was looked upon as a sufficient security; yet either upon the account of his

three men, and turning out of all the officers of the army, contrary to promise, confirmed me in my resolutions not to return. To conclude, the tide is

own behaviour or that of his party, or some private resentment, the present House of Commons thought fit to address the king to bring him, together with Colonel John Lambert, to their tryals. Accordingly, June 4, 1662, they were both arraigned at the king's bench bar, before Sir Robert Forster, lord chief justice, and other judges; and Sir Henry indicted for imagining and compassing the death of the king, and for taking upon him and usurping the government: and Colonel Lambert for levying war against the king in several parts of the kingdom. The carriage and behaviour of Vane was very extraordinary; for, being charged by the king's council with a continued series of treasons, from the king's murder to the restoration, without insisting upon the rebellion with which they might have begun, he absolutely denied that they had any power to try him, and declared, "that neither the king's death, nor the members themselves could dissolve the Long Parliament, whereof he being one, no inferior court could call him in question.....His whole behaviour was so assuming and insolent, that the court and king's council told him, that his own defence was a fresh charge against him and the highest evidence of his inward guilt, had there not been such a cloud of witnesses to prove the particulars.....The jury after a very short stay brought him in guilty of high treason. Colonel Lambert's behaviour was quite contrary, full of submission and discretion.....He was likewise condemned; but when he was to receive sentence with Sir Henry Vane, he was by the king's favor reprieved at the bar, upon the report that the judges had given of his submissive and handsome deportment at his tryal; upon which he desired the judges to return to his majesty his most humble thanks, for his so unexpected mercy, which the judges said might have been, and was once thought to be extended to Sir Henry, if his forwardness and contemptuous behaviour had not precluded the way to it. The Colonel was confined during life in the Isle of

not to be diverted nor the oppressed delivered; but God, in his time, will have mercy on his people. He will save and defend them, and avenge the blood of

Guernsey, where he continued a patient and discreet prisoner for above thirty years.

Archdeacon Echard and Bishop Kennet; as see the hist. register, p. 704, 5.

And since it hath pleased God, who separated me from the womb to the knowledge and service of the gospel of his Son, to separate me also to this hard and difficult service at this time, and to single me out to the defence and justification of this his cause, I could not consent by any words or actions of mine, that the innocent blood that hath been shed in the defence of it throughout the whole war, the guilt and moral evil of which must and does certainly lye somewhere, did lye at my door, or at theirs, that have been the faithful adherers to this cause. This is with such evidence upon my heart, that I am most freely and cheerfully willing to put the greatest seal to it I am capable, which is, the pouring out of my very blood in witness to it; which is all I shall need to say in this place and at this time, having spoken at large to it in my defence at my tryal, intending to have said more the last day, as what I thought was reasonable for arrest of judgment, but I was not permitted then to speak it; both which may, with time and God's providence, come to public view. And I must still assert, that I remain wholly unsatisfied, that the course of proceedings against me at my tryal were according to law; but that I was run upon and destroyed, contrary to right and the liberties of *Magna Charta*, under the form only of justice, which I leave to God to decide, who is the judge of the whole world, and to clear my innocency. In the mean time I beseech him to forgive them and all that had any hand in my death; and that the Lord, in his great mercy, will not lay it unto their charge, etc.

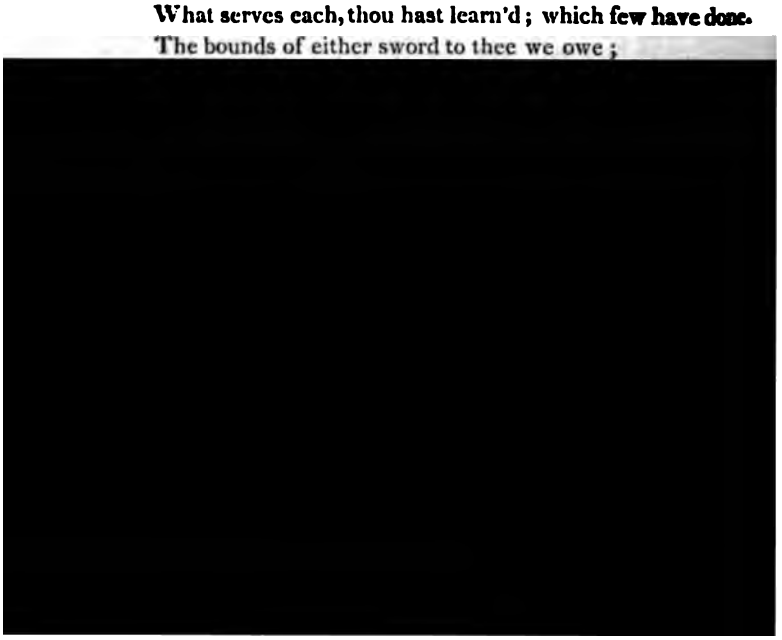
The tryal of Sir Henry Vane, knt. at the king's bench, Westminster, June 2, and 6, 1662, together with what

those who shall now perish, upon the heads of those, who, in their pride, think nothing is able to oppose them. Happy are those, whom God shall make in-

he intended to have spoken the day of his sentence, June 11, for arrest of judgment, had he not been interrupted and over-ruled by the court, and his bill of exceptions. With other occasional speeches, etc. Also his speech and prayer, etc. on the scaffold. Printed in the year 1662, in quarto, p. 90.

Sonnet to Sir Henry Vane.

Vane, young in years, but in sage councils old,
Than whom a better senator ne'er held
The helm of Rome, when gowns not arms repell'd
The fierce Epirot, and the African bold,
Whether to settle peace, or to unfold
The drift of hollow states, hard to be spell'd;
Then to advise how war may best upheld,
Move by her two main nerves, iron and gold,
In all her equipage: besides to know
Both spiritual and civil, what each means,
What serves each, thou hast learn'd; which few have done.
The bounds of either sword to thee we owe;



struments of his justice in so blessed a work! If I can live to see that day, I shall be ripe for the grave, and able to say with joy, "Lord, now lettest

Sir Henry Vane's was a very singular case, and the transactions in which he bore a part, happened in a conjuncture of affairs which never did exist before, and I hope never will again: an usurpation founded in the dissolution of the ancient legal government, and the total subversion of the constitution.

I will therefore say nothing to the merits of the question more, than that the rule laid down by the court, involved in the guilt of treason every man in the kingdom who had acted in a public station under a government possessed in fact for twelve years together of sovereign power; but under various forms, at different times, as the enthusiasm of the herd or the ambition of their leaders dictated.

But this resolution hath not in the least shaken the principle I contend for; it doth in reality suppose the truth of it. For if Charles the second was king *de facto* from the death of his father, every thing done from that time in prejudice of his right was undoubtedly high treason.

The only difficulty is, what did the court mean by a king *de facto*? They could not mean, what every soul before themselves understood, a king in the actual and full exercise of the regal power. They meant, I presume, as his lordship upon another occasion is pleased to express himself, one *quasi* in possession of the crown; since, during the usurpation, no other person did claim to act under the regal title.

The distinction between *de jure* and *de facto* kings was taken up by the house of York, to serve the purpose of ambition and revenge. By the former, they meant those who are presumed to have succeeded to the crown in a regular course of descent, By the latter, those who have not had that claim to it. The former were in their estimation the only rightful kings. The latter, not excepting such as have claimed under a parliamentary settlement, no better than fortunate usurpers.

thou thy servant depart in peace." Farewell. My thoughts as to king and state depending upon their actions, no man shall be a more faithful servant to

This doctrine perfectly suited the views of that faction. For the crown having been entailed by act of Parliament on Henry the Fourth and his issue, the house of York saw itself totally excluded, unless its pretensions could be supported by a title paramount to the power of Parliament. Proximity in blood was its only refuge, and to that the partizans of that house resorted. And in doing so, they brought upon themselves, in my opinion, the whole guilt of that deluge of blood which was afterwards spilt in the unnatural war between the two houses.

It is not to be wondered at, that men whose ambition suggested to them the hope of overturning an establishment, to which themselves, their ancestors, and the whole nation had submitted for more than half a century, should endeavour to convince mankind of the rectitude of their intentions, and the justice of their claim. Nor is it at all surprizing, that their followers, in the heat of the times, should suffer themselves to be so easily convinced. For in the ferment of parties, leaders never blush, and the herd of the party seldom think. But, that persons who are placed at a happy distance from these disastrous times, should in cool blood revive and adopt a doctrine, which hath

him than I, * if he make the good and prosperity of his people his glory; none more his enemy, if he doth the contrary. To my particular friends I shall

resort to the same narrow rules and maxims of law and justice, by which questions of mere property, the title to a pigstye or a laystall, are governed. And thence conclude, that the legislature itself cannot, without manifest injustice, interrupt the ancient, legal, established order of succession. It cannot, say they, without injustice, give to one branch of the royal family, what by right of blood belongeth to another.

Thus they argue. And if I could conceive of the crown as of an inheritance of mere property, I should be tempted to argue in the same manner. But had they considered the crown and royal dignity, as a descendable office, as a trust for millions, and extending its influence to generations yet unborn; had they considered it in that light, they would soon have discovered the principle upon which the right of the legislature to interpose in cases of necessity is manifestly founded. And that is the *salus populi* already mentioned (p. 382) upon a like occasion, etc. etc. etc. which the ingenious reader should peruse.

Observations on some passages in the writings of L. C. J. Hale; relative to the principles on which the revolution and present happy establishment are founded. By (that faithful judge and friend to liberty) Sir Michael Foster.

There is an original and good picture of this extraordinary but unfortunate gentleman, Sir Henry Vane, in the British Museum.

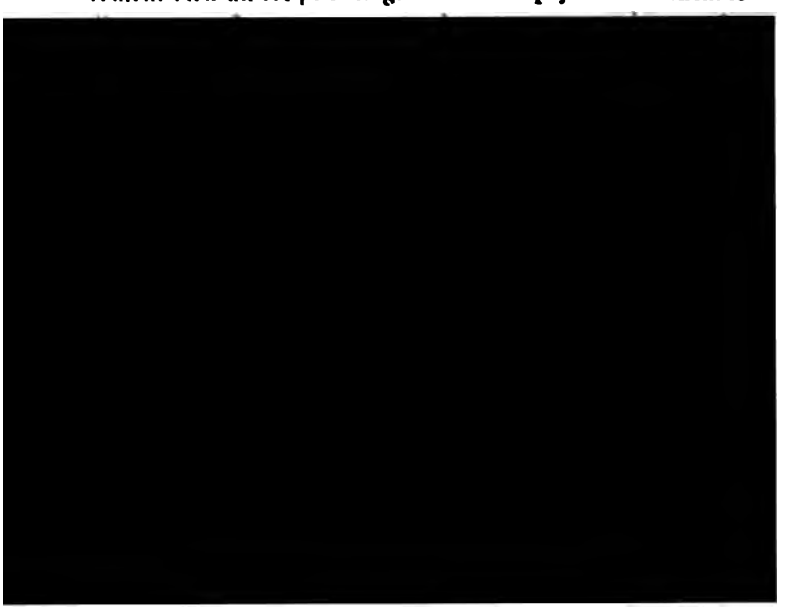
(* *If he make the good and prosperity of his people his glory;*)
Of a tall stature and of sable hue
Much like the son of Kish, that lofty Jew;
Twelve years compleat he suffer'd in exile,
And kept his father's asses all the while.
At length by wonderful impulse of fate,
The people call him home to mend the state;

be constant on all occasions, and to you a most affectionate servant."

And, what is more, they send him money too,
And clothe him all, from head to foot, anew.
Nor did he such small favours then disdain,
Who in his thirtieth year began his reign.
In a slash'd doublet then he came ashore,
And dubb'd poor Palmer's wife his royal whore.
Bishops, and Deans, Peers, Pimps, and Knights he made,
Things highly fitting for a Monarch's trade!
With women, wine, and viands of delight,
His jolly vassals feast him day and night.
Etc. etc. etc.

An historical poem by A. Marvell.

.....D'où les Anglois remontant au souvenir de la puissance de leurs flottes du temps d'Olivier; de la gloire qu'elles ont remportées sur toutes les mers; les alliances, que toute la terre recherchoit avec eux; de la pompe de la Republique, vers laquelle il venoit des ambassadeurs de tous caustez: ils ne peuvent s'empescher de faire des comparaisons odieuses, et de temoigner quelque disposition à des nouveaux desordres. Ils veulent bien un roi pour la gloire de leur pays. Ils aiment ce



After he had continued some time in Italy, he thought proper to draw nearer home, that if an opportunity should offer, "he might not," as General †

traires à ceux du public; qu'il est sensible au peuple de se saigner inutilement, et de voir employer son argent en choses superfluës, ou mesme en despences des-honnetes; (rendered in the translation of 1709, "upon base lusts;") qu'il ne'st pas juste que quelques sang suës de cour en soient remplies elles seules, et que l'on ne navige ou ne laboure, qu'on ne travaille sur mer et sur terre, que pour mettre bien è leur aise un petit nombre de personnes oisives, qui abuseront de la facilitè d'un prince. Ces pensées et ces discours sont conformes a l'humeur arrogante des Anglois, et a la jalousie avec laquelle ils regardent les prosperitez d'autruy. Mais outre la particuliere inclination que la nature leur donne à former des raisonnemens si peu respectueux, ils se sont nouris de longue main dans cette mauvoise habitude par la libertè de leurs Parlemens, d'ont il faut que Je vous raconte l'histoire, telle qu'il me'n souvient ou que Je me la suis figuree, etc. etc. etc.

"Relation d'un voyage en Angleterre." By Mons. Sorbiere. Printed at Cologne, 1666, in duod. p. 107.

It was hoped and expected, that this prodigious and universal calamity, (the fire of London) for the effects of it covered the whole kingdom, would have made some impression and produced some reformation in the licence of the court. For as the pains the king had taken night and day during the fire, and the dangers he had exposed himself to, even for the saving of the citizens' goods, had been notorious and in the mouths of all men, with many good wishes and prayers for him, so his majesty had been heard during that time to speak with great piety and devotion of the displeasure that God was provoked to. And no doubt the deep sense of it did raise many good thoughts and purposes in his royal breast. But he was narrowly watched

† Memoirs, p. 384, folio edit.

Ludlow observes, "be wanting to his duty and the public service." In his way he visited that General and his friends, in their retirement in Switzerland;

and looked to, that such melancholic thoughts might not long possess him, the consequence and effect whereof was like to be more grievous than that of the fire itself; of which, that loose company that was too much cherished, even before it was extinguished, discoursed as of an argument for mirth and wit to describe the wildness of the confusion all people were in; in which the scripture itself was used with equal liberty, when they could apply it to their profane purposes. And Mr. May presumed to assure the king, "that this was the greatest blessing, that God had ever conferred upon him, his restoration only excepted: for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought necessary for his service; there being no other way to govern that rude multitude but by force."

The continuation of the life of Edward Earl of Clarendon, vol. 3. p. 674.....See other passages of a like kind in that work. (Midhurst Baptist May, Esq. privy purse, 1000l. a year allowance. Got besides, in boons for secret service, 40,000l. This is he that sayd, "Five hundred pounds a year was enough for a country gentleman to drink ale, eat beef, and stink with," etc. A seasonable argument, etc.)

Such unanimity appeared in the proceedings of the new Parliament, or convention as it came afterwards to be called, because it was not summoned by the king's writ, that there was not the least dispute among them but upon one single point; yet that was a very important one. Hale, afterwards the famous chief justice, moved, "That a committee might be ap-

assuring them of his affection and friendship, and no way declining to own them and the cause for which they suffered. He staid with them about three

pointed to look into the propositions that had been made, and the concessions that had been offered by the late king, during the war, particularly at the treaty of Newport, that from thence they might digest such propositions as they should think fit to be sent over to the king." This was seconded, but I do not remember (pity it is that he did not!) by whom. It was foreseen that such a motion might be set on foot, so Monk was instructed how to answer it, whensoever it should be proposed. He told the house, that there was yet, beyond all men's hope, an universal quiet all over the nation; but there were many incendiaries still on the watch, trying where they could first raise the flame. He said he had such copious informations sent him of these things, that it was not fit they should be generally known: he could not answer for the peace either of the nation or of the army, if any delay was put to the sending for the king; what need was there of sending propositions to him? Might they not as well prepare them and offer them to him when he should come over? He was to bring neither army nor treasure with him, either to fright them or corrupt them. So he moved, that they would immediately send commissioners to bring over the king: and said, that he must lay the blame of all the blood or mischief that might follow, on the heads of those who should insist on any motion that might delay the present settlement of the nation. This was echoed with such a shout over the house, that the motion was no more insisted on.

This was indeed the great service that Monk did. It was chiefly owing to the post he was in and to the credit he had gained; for as to the restoration itself, the tide run so strong, that he only went into it dexterously enough to get much fame and great rewards, for that which will have still a great appearance in history. If he had died soon after, he might have been more justly admired, because less known and seen only in one advantageous light; but he lived long enough to make it known

weeks; and designing to go for Flanders, where he resolved to pass the ensuing winter, he took his journey by the way of Berne, * doing all the good

how false a judgment men are apt to make upon outward appearance. To the king's coming in without conditions may be well imputed all the errors of his reign. And when the Earl of Southampton came to see what he was likely to prove, he said once in great wrath to Chancellor Hide, "It was to him they owed all they either felt or feared; for if he had not possessed them in all his letters with such an opinion of the king, they would have taken care to have put it out of his power either to do himself or them any mischief, which was like to be the effect of their trusting him so entirely." Hide answered, "That he thought the king had so true a judgment and so much good nature, that when the age of pleasure should be over, and the idleness of his exile, which made him seek new diversions for want of other employment, was turned to an obligation to mind affairs, then he would have shaken off those entanglements." Burnet's hist. of his own times, vol. 1. p. 89.

A colony of French possess the court;
Pimps, priests, buffoons, in privy chamber sport.
Such slimy monsters ne'er approached a throne

offices he could for General Ludlow and his friends, with the advoyer and other principal magistrates of

enter into separate measures with Holland; to which end it was absolutely necessary to engage the good offices of the king of England, who was looked upon to be master of the peace whenever he pleased. The bargain was struck for three or four hundred thousand pounds. But when all was agreed, Monsieur Barillon, the French ambassador, told the king, "that he had orders from his master, before payment, to add a private article, by which his majesty should be engaged never to keep above eight thousand men of standing troops in his three kingdoms." This unexpected proposal put the king in a rage, and made him say, "—d's fish! Does my brother of France think to serve me thus? Are all his promises to make me absolute master of my ——— come to this? Or does he think that a thing to be done with eight thousand men?

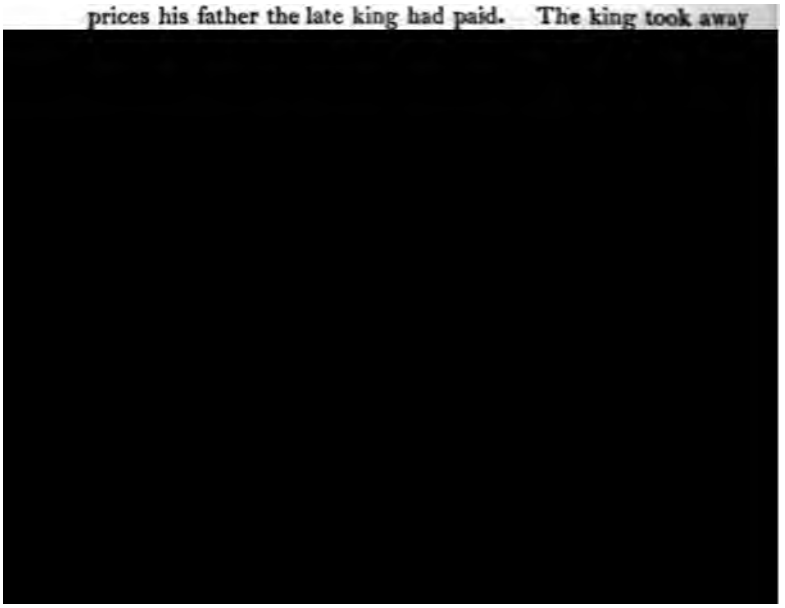
Temple's works, vol. II. p. 464, in a note, edit. 1720.

..... By this means came in Charles the second, a luxurious effeminate prince, a deep dissembler, and if not a papist himself, yet a great favourer of them: but the people had suffered so much from the army, that he was received with the utmost joy and transport. The Parliament, in the honey-moon, passed what laws he pleased, gave a vast revenue for life, being three times as much as any of his predecessors enjoyed, and several millions besides to be spent in his pleasures. This made him conceive vaster hopes of arbitrary power than any that went before him, and in order to it he debauched and enervated the whole kingdom. His court was a scene of adulteries, drunkeness, and irreligion, appearing more like stews or the feasts of Bacchus, than the family of a chief magistrate. And in a little time the contagion spread through the whole nation, that it was out of the fashion not to be lewd, and scandalous not to be a public enemy," etc. etc. etc.

"A short hist. of standing armies in England." By John Trenchard. London, 1698, in quarto.

that city. He was at Brussels in the end of the year 1663, whence he wrote to his father, with relation to

..... Russel the painter, related to or connected with the Olivers, told Vertue a remarkable story. The greater part of the collection of King Charles being dispersed in the troubles, among which were several pictures of the Olivers, Charles II. who remembered and was desirous of recovering them, made many inquiries about them after the restoration. At last he was told by one Rogers of Isleworth, probably Progers, well known for being employed in the king's private pleasures, that both father and son were dead, but that the son's widow was living at Isleworth and had many of their works. The king went privately and unknown with Rogers to see them. The widow showed several finished and unfinished, with many of which the king being pleased, asked if she would sell them; she replied, she had a mind the king should see them first, and if he did not purchase them, she should think of disposing of them.... The king discovered himself; on which she produced some more pictures which she seldom showed. The king desired her to set a price; she said she did not care to make a price with his majesty, she would leave it to him: but promised to look over her husband's books and let his majesty know what prices his father the late king had paid. The king took away



transporting a body of the best officers and soldiers of the old army into the service of the Emperor.

Horace Walpole. Strawberry-hill, printed 1762, from his own press, (mark that ye nobles, gentry), in two vols. quarto, vol. 2. p. 14.

One other extract from this author, to whom the public are variously obliged, cannot be improper in the Memoirs of A. Sydney. It is taken from the second volume of the above work, p. 147.

"The whole fabric (the intended palace of Whitehall by Inigo Jones) was so glorious an idea, that one forgets for a moment, in the regret for its not being executed, the confirmation of our liberties obtained by a melancholy scene that passed before the windows of that very banqueting-house."

Alfred was of person comlier than all his brethren, of pleasing tongue and graceful behaviour, ready wit and memory; yet through the fondness of his parents towards him, had not been taught to read till the twelfth year of his age; but the great desire of learning which was in him, soon appeared, by his conning of Saxon poems day and night, which with great attention he heard by others repeated. He was besides, excellent at hunting and the new art then of hawking, but more exemplary in devotion, having collected into a book certain prayers and psalms, which he carried ever with him in his bosome to use on all occasions. He thirsted after all liberal knowledge, and oft complained, that in his youth he had no teachers, in his middle age so little vacancy from wars and the cares of his kingdome; yet leisure he found sometimes, not only to learn much himself, but to communicate thereof what he could to his people, by translating books out of Latin into English, Orosius, Boethius, Beda's history, and others; permitting none unlern'd to bear office, either in court or commonwealth. At twenty years of age, not yet reigning, he took to wife Egelswitha, the daughter of Ethelred, a Mercian Earl. The extremities which

In 1665, upon the breaking out of the war between England and the United Provinces, ten per-

befell him in the sixth of his reign, Neothan Abbot told him, were justly come upon him for neglecting in his younger days the complaints of such as injured and oppressed repaired to him, as then second person in the kingdom, for redress; which neglect, were it such indeed, were yet excusable in a youth, through jollity of mind unwilling perhaps to be detained long with sad and sorrowful narrations; but from the time of his undertaking regal charge, no man more patient in hearing causes, more inquisitive in examining, more exact in doing justice, and providing good laws, which are yet extant; more severe in punishing unjust judges or obstinate offenders. Theeves especially and robbers, to the terror of whom in cross waies were hung upon a high post certain chains of gold, as it were daring any one to take them thence; so that justice seemed in his daies not to florish only but to tryumph. No man then hee more frugal of two pretious things in man's life, his time and his revenue; no man wiser in the disposal of both. His time, the day and night, he distributed by the burning of certain tapours into three equal portions; the one was for devotion, the other for public or private affairs, the third for bodily refreshment; how each hour past, he was put in minde by one who had that office. His

sons were sent by King Charles II. to Augsburg in Germany † to *assasinate* Colonel Sydney; and probably might have effected their design, if he, having

two monasteries; the third of a school, where he had perswaded the sons of many noblemen to study sacred knowledge and liberal arts, some say at Oxford; the fourth was for the relief of foreign churches as far as India to the shrine of St. Thomas, sending thether Sigelm, bishop of Sherburn, who both returned safe and brought with him many rich gems and spices: guifts also and a letter he receaved from the patriarch of Jerusalem; sent many to Rome, and from thence receaved reliques. Thus far, and much more might be said of his noble minde, which rendered him the minor of princes. His body was diseased in his youth with a great soreness in the seiege; and that ceasing of itself, with another inward pain of unknown cause, which held him by frequent fits to his dying day; yet not disinabled to sustain those many glorious labors of his life both in peace and war.

The history of Britain, that part especially now called England, from the first traditional beginning to the Norman conquest. By John Milton. London, printed 1671, in quarto.

The reader will forgive the following digression, if it be a digression, respecting good and bad ministers, which makes part of Milton's inimitable prayer, in his first prose tract, intitled "Of Reformation," etc. London, printed 1641, in quarto.

"Then amidst the hymns and halleluiahs of saints, some one may perhaps bee heard offering at high strains in new and lofty measures, to sing and celebrate thy divine mercies and marvelous judgements in this land throughout all ages; whereby this great and warlike nation, instructed and inured to the fervent and continuall practice of truth and righteousnesse, and casting farre from her the rags of her old vices, may presse on hard to that high and happy emulation to be found the soberest, wisest, and most christian people, at that day when thou the eternall

† Memoirs of Edmund Ludlow, p. 404.

undertaken a journey to Holland, upon business relating to the public, had not removed from that city before their arrival.

and shortly-expected king shall open the clouds to judge the severall kingdomes of the world, and distributing national honors and rewards to religious and just commonwealths, shall put an end to all earthly tyrannies, proclaiming thy universal and milde monarchy through heaven and earth. Where they undoubtedly, that by their labors, counsels and prayers, have been earnest for the common good of religion and their countrey, shall receive, above the inferior orders of the blessed, the regall addition of principalities, legions and thrones into their glorious titles; and in super-eminence of beatific vision progressing the datelesse and irrevoluble circle of eternity, shall clasp inseparable hands with joy and blisse, in over measure for ever. But they contrary, that by the impairing and diminution of the true faith, the distresses and servitude of their country, aspire to high dignity, rule and promotion here, after a shamefull end in this life, which God grant them, shall be throwne downe eternally into the darkest and deepest gulfe of hell; where under the despightfull controule, the trample and spurne of all the other damned, that in the anguish of their torture shall have no other ease then to exercise a raving and bestiall tyrranny over them as their slaves and negros, they shall remaine in that plight for ever, the basest, the lowermost, the most dejected, most underfoot and downe trodden vassals of perdition."

* Edmund Ludlow, knight of the shire for the county of Wilts, in the Parliament which began Nov. 3, 1640; one of the council of state; lieutenant-general of horse and commander in chief of the forces in Ireland....An honest man by the confession of his enemies. His seat was Maiden Bradley, with a paternal estate, it is said, of upwards of 3000l. a year belonging to it. During his retirement in Switzerland, he wrote his "Memoirs," and several curious valuable tracts.

He continued abroad till the year 1677, when he procured leave to return to England; and obtained a particular pardon, * according to Bishop Sprat, "upon repeated promises of constant quiet and obedience for the future." Bishop Burnet affirms, that "he came back when the Parliament was pressing the king into a war. The court of France obtained leave for him to return. He did all he could to divert people from the war; so that † some took

It may not be improper here, to give an extract of a letter from Philip, Lord Viscount Lisle, to his father Robert, Earl of Leicester, dated Nov. 6, 1649, taken from the Sydney state papers; as it accounts, in part, for the kindness and attention shewn afterwards in Switzerland to the commonwealth party, which sheltered themselves there...." The Parliament's declaration made since the change of the government, hath been, as the council is informed, much approved of, in many parts of the Swisses countrey; and the ministers there, do publicly give God thanks for the establishment of the republic, and pray for it: upon which I believe an agent will shortly be sent thither."

The declaration, the Latin edition of it, was printed Mar. 22, 1648, in quarto, under this title, "Parliamenti Angliae declaratio. In quâ res nuperam gestae, et decretum de statu Angliae regio in liberam rempublicam vertendo, asseruntur." And the following order was placed before the title, "Die Sabbathi, 17 Martii, 1648. Comitiis populi Parliamentariis determitur, hanc declarationem typis esse ilicò mandandam. Hen. Scobell Cleric. Parliamenti."

* Hist. of the Rye-house plot.

(† Some took him for a pensioner of France.)

The following anecdote having been communicated to Dr. Hutcheson, of Glasgow, was frequently related by him to his

him for a pensioner of France. But he said, our court was in an entire confidence in France, and had no other design in this shew of a war, but to raise an army and keep it beyond sea, till it was trained and modelled." But it is evident from a letter of his *

friends, "That during Mr. Sydney's stay in France, one day hunting with the French king, and being mounted on a fine English horse, whose form and spirit caught the king's eye, he received a message that he would please to oblige the king with his horse, at his own price. He answered that he did not chuse to part with him. The king determined to have no denial, and gave orders to tender him the money or to seize the horse; which being made known to Mr. Sydney, he instantly took a pistol and shot him, saying, that his horse was born a free creature, had served a free man, and should not be mastered by a king of slaves."

(* *To Henry Savile, the English ambassador in France,)*

Mr. Savile is said to have replied to a Frenchman, who exulted upon the fine writings of his countrymen, that there were but two subjects in nature worth a wise man's thoughts, namely religion and government, and they durst speak of neither.

to Henry Savile, the English ambassador in France, that it was that gentleman who obtained leave for him to return. The letter is dated from Nerac, December 28, 1682; but the year erroneously printed.

si vainement combattues, jusqu'a la nouvelle charue, et à l'insertion de la petite vérole, combattues encore."

Il Signor Martinelli, has à note also to the same effect in his elegant edition of the "Decamerone di Giouanne Boccacio."

"La lingua Tuscana, può dirsi il miracolo delle lingue sì morte come viventi. Ella nacque, si può dir, come rosa infra le spine della persecuzione; perche Dante e il Petrarca le loro belle opere in esilio composero, e il Boccacio il suo Decamerone terminò, siccome nel proemio alla quarta giornata dichiara, saettato dall'invidia e dalla callunnia. Il Machiavelli fù martoriato dalla fazione dei Medici, per essersi ingegnato d'imyedir loro d'occupare la tirannide della sua patria. Il Guicciardin si prese un volontario esilio in una sua villa, per non pedere spirare la libertà della Republica Fiorentina nelle mani di Cosimo primo, e quivi terminò di scrivere la sua Istoria d'Italia. Al Segni e al Varchi, proibirono i Granduchi di publicare le loro Istorie di Firenze. Il Galileo, tra le persecuzioni con le quali convenne combattere, ebbe quella d'Impostore che si arrogarono le sue mirabili invenzioni, con le quali ha aperto ai mortali la via d'indagare l'indole e movimenti de' corpi celesti; e finalmente l'Aristo visse povero e Torquato Tasso morì poverissimo.

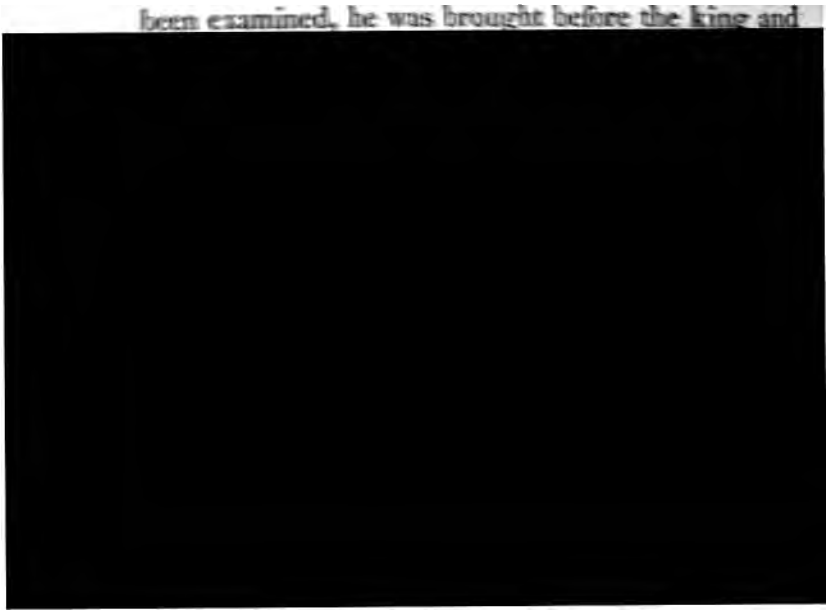
Parlando dei Latini, Ennio fù produzione del favore di Caton maggiore, Terenzio di quello di Scipione Luctezio fù l'ammirazione e la delizia dei Grandi, e Cavalier riguardevole egli stesso, e Cicerone fù l'Arbitro un tempo della Repubblica; Virgilio e Orazio ebbero uno Augusto che gli colmò di benefizj, e Cornelio Tacito ebbe l'Imperator Traiano per protettore e per amico.

"E venendo alle lingue viventi, la lingua Francese ebbe varj governi, che premiarono grandemente quelli scrittori che in essa

* He was a Treasurer in the 24th of November, [illegible] and then gave a discharge to the executors of his father's will. Robert Earl of Sunderland, Henry Sydney his brother, and Sir John Pelham, bart. for the sum of [illegible].

The year following, he stood candidate for the town of Guildford, in Surrey; but the court opposing his election, he lost it: and though he drew up an account of the irregular proceedings in it, yet he did not think proper to pursue his claim. In [illegible] he stood likewise candidate for the borough of Bramber, in Sussex; but was not chose, the interest being before made by Sir John Pelham, and the Sydney family, fearing the ardour and intrepidity of his temper in such times for his brother Henry Sydney, afterwards Earl of Romney.

In 1683, he was accused of being concerned in the Rye-house plot: and after the lord Russel had been examined, he was brought before the king and



him, but he would not fortify their evidence by any thing that he should say; so that his examination was very short. He lay some time in the Tower, and was brought thence by *habeas corpus* on the 7th of November, 1683, to the king's-bench-bar, where he was arraigned on an indictment of high treason. On the 21st of November he was tried. For the particulars of the trial, the reader will be pleased to refer to it.

The Colonel being found guilty, when he was brought into court to receive sentence, he repeated his objections to the evidence against him; * in which judge Withins interrupted him, and by a strange indecency gave him the lie in open court, which he bore patiently.

His execution was respited for three weeks; the trial being universally exclaimed against, as a piece of most enormous injustice. After conviction he sent to the lord Halifax, who was his nephew by marriage, a paper to be laid before the king, containing the main points of his defence, upon which he appealed to his majesty, and desired he would review the whole matter. Whereupon the lord chief justice Jefferies, who had tried him, said, † '*That either Sydney must die or he must die.*' During his imprisonment, he sent for some independent preachers, and expressed to them a deep remorse for his past sins, and a great confidence in the mer-

* See the note in the Trial.

† Burnet, vol. i. p. 572.

cies of God. When he saw the warrant for execution, he expressed no concern at it, and the change that was in his temper amazed all who went to him. * He told the sheriffs who brought the warrant, that

* "This indenture made the seventh day of December, in the five and thirtieth year of the reign of our sovereign lord Charles the Second, by the grace of God king of England, Scotland, France and Ireland, defender of the faith, &c. and in the year of our Lord 1683, between the honourable Thomas Cheeke, Esq. lieutenant of his majesty's Tower of London, of the one part, and Peter Daniel, Esq. and Samuel Dashwood, Esq. sheriffs of the county of Middlesex, of the other part: Whereas Algernon Sydney, Esq. by warrant of the right honourable Sir Leoline Jenkins, knight, his majesty's principal secretary of state: bearing date at Whitehall the five and twentieth day of June, in the five and thirtieth year of the reign of king Charles the Second aforesaid, was committed to the custody of the said lieutenant of the Tower for high treason, in compassing the death of the king, and conspiring to levy war against him, by him the said lieutenant to be safely kept until he should be delivered by due course of law: and whereas, by writ issuing out of his majesty's court of king's bench, under the seal of the said court, bearing date the eight and twentieth day of November last past, reciting the

he should not expostulate upon any thing on his account, for the world was now nothing to him; but he desired they would consider, how guilty they were of his blood, who had not returned a fair jury, but one packed and as they were directed by the king's solicitor. He spoke this to them, not for his own sake, but for their sake. One of the sheriffs was struck with this, and wept. He wrote a long vindication of himself, which Bishop Burnet says he had read; and that he summed up the substance of it in the paper which he gave to the sheriffs; and suspecting they might suppress it, he gave a copy of it to a friend. It was a fortnight before it was printed, though the speeches of those who died for the popish plot were published the very next day; and it would not have been suffered to have been printed, but that written copies were daily dispersed. He met death

of the date of these present indenture, deliver unto the said Peter Daniel and Samuel Dashwood, the body of the said Algernon Sydney, in the said writ mentioned, according to the form and effect of the said writ; and the said Peter Daniel and Samuel Dashwood, do hereby acknowledge to have received, on the day of the date of this present indenture, of and from the said Thomas Cheeke, the body of the said Algernon Sydney, and of him do acquit and discharge the said Thomas Cheeke by these presents....In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

PETER DANIEL.
SAMUEL DASHWOOD.

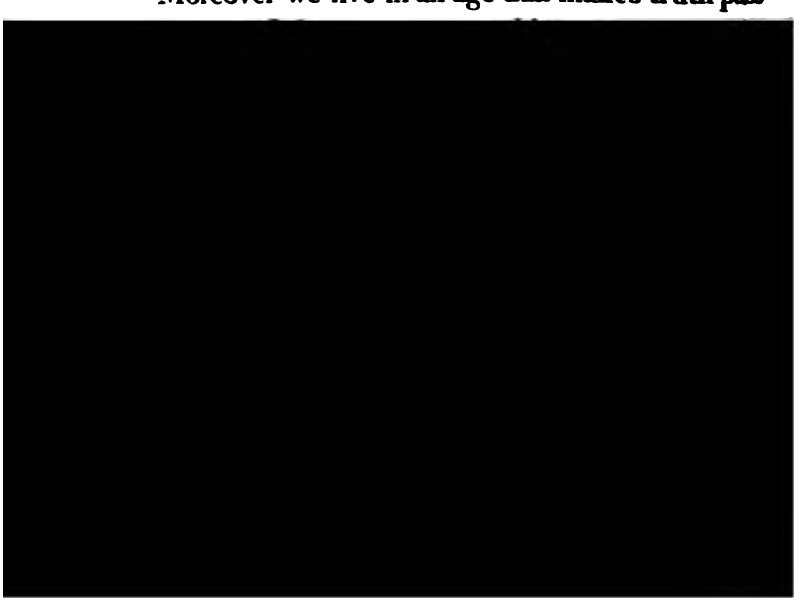
Sealed and delivered in the presence of
RICH. BRADBORNE.
GB. REYNOLDS.

with an unconcernedness which became one, who had set up Marcus Brutus for his pattern. He was but a few minutes on the scaffold on Tower-hill; he spake little, and his prayer was very short. His head was cut off at one blow, on the 7th of December, 1683, aged about sixty-one years. The next day his body was interred with his ancestors at Penshurst. The paper which he delivered to the sheriffs, sets forth his innocence, and the violent treatment which he had undergone, with such force that it deserves to be inserted here at full length:

'*Men, Brethren, and Fathers; Friends, Countrymen, and Strangers!*

'It may be expected, that I should now say some great matters unto you; but the rigor of the season, and the infirmities of my age, increased by a close imprisonment of above five months, do not permit me.

'Moreover we live in an age that makes truth pass



perjuries not to be denied or rather sworn by himself, to deserve mention; and being a single witness, would be of no value, though he had been of unblemished credit, or had not seen and confessed, that the crimes committed by him would be pardoned only for committing more; and even the pardon promised could not be obtained till the drudgery of swearing was over.

'This being laid aside, the whole matter is reduced to the papers said to be found in my closet by the king's officers, without any other proof of their being written by me, than what is taken from suppositions upon the similitude of an hand that is easily counterfeited, and which hath been lately declared, in the lady Car's case, to be no lawful evidence in criminal causes.

'But, if I had been seen to write them, the matter would not be much altered. They plainly appear to relate to a large treatise written long since in answer to Filmer's book, which by all intelligent men is thought to be grounded upon wicked principles, equally pernicious to magistrates and people.

'If he might publish to the world his opinion.... that all men are born under a necessity derived from the laws of God and nature, to submit to an absolute kingly government, which could be restrained by no law, or oath; and that he that has the power, whether he came to it by creation, election, inheritance, usurpation, or any other way, had the right; and

none must oppose his will, but the persons and estates of his subjects must be indispensably subject unto it; I know not why I might not have published my opinion to the contrary, without the breach of any law I have yet known.

'I might, as freely as he, publicly have declared my thoughts, and the reasons upon which they were grounded; and I am persuaded to believe, that God had left nations to the liberty of setting up such governments as best pleased themselves....

'That magistrates were set up for the good of nations, not nations for the honour and glory of magistrates....

'That the right and power of magistrates in every country was that which the laws of that country made it to be....

'That those laws were to be observed and the

family, the worst of all villanies was thereby rewarded with the most glorious privileges....

'That if such doctrines were received, they would stir up men to the destruction of princes with more violence than all the passions that have hitherto raged in the hearts of the most unruly....

'That none could be safe, if such a reward were proposed to any that could destroy them....

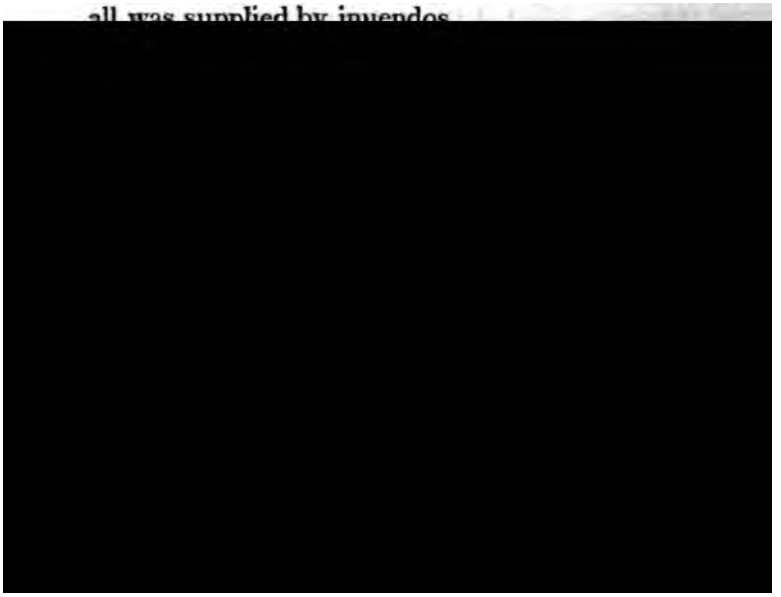
'That few could be so gentle as to spare even the best, if, by their destruction, a wild usurper could become God's anointed, and by the most execrable wickedness invest himself with that divine character.

'This is the scope of the whole treatise; the writer gives such reasons, as at present did occur unto him, to prove it. This seems to agree with the doctrines of the most reverenced authors of all times, nations and religions. The best and wisest of kings have ever acknowledged it. The present king of France has declared, that kings have that happy want of power, that they can do nothing contrary to the laws of their country; and grounds his quarrel with the king of Spain, *anno* 1667, upon that principle. King James, in his speech to the Parliament, *anno* 1603, doth in the highest degree assert it: the scripture seems to declare it. If nevertheless the writer was mistaken, he might have been refuted by law, reason and scripture; and no man for such matters was ever

otherwise punished, than by being made to see his error; and it has not, as I think, been ever known that they had been referred to the judgment of a jury, composed of men utterly unable to comprehend them.

'But there was little of this in my case: the extravagance of my prosecutors goes higher: the above-mentioned treatise was never finished, nor could be in many years, and most probably would never have been. So much as is of it was written long since, never reviewed, nor shewn to any man; and the fiftieth part of it was not produced, and not the tenth part of that offered to be read. That which was never known to those who are said to have conspired with me, was said to be intended to stir up the people in prosecution of the designs of those conspirators.

'When nothing of particular application to time, place, or person could be found in it, as has ever been done by those who endeavoured to raise insurrections, all was supplied by innuendos.



unless he could deduce his pedigree from the eldest son of Noah, and shew that the succession had still continued in the eldest of the eldest line, and been so deduced to him.

'Every one may see what advantage this would be to all the kings of the world; and whether, that failing, it were not better for them to acknowledge they had received their crowns by the consent of willing nations, or to have no better title to them than usurpation and violence; which, by the same ways, may be taken from them.

'But I was long since told, that I must die or the plot must die.

'Lest the means of destroying the best protestants in England should fail, the bench must be filled with such as had been blemishes to the bar.

'None but such as these would have advised with the king's council of the means of bringing a man to death; suffered a jury to be packed by the king's solicitors and the under-sheriff; admit of jurymen who are not freeholders; receive such evidence as is above-mentioned; refuse a copy of an indictment, or suffer the statute of 46 Edward III. to be read, that doth expressly enact, 'It should in no case be denied to any man, upon any occasion whatsoever;' over-rule the most important points of law without hearing. And whereas the statute, 25 Edward III. upon which they said I should be tried, doth reserve

to the Parliament all constructions to be made in points of treason, they could assume to themselves not only a power to make constructions, but such constructions as neither agree with law, reason or common sense.

'By these means I am brought to this place. The Lord forgive these practices, and avert the evils that threaten the nation from them! The Lord sanctify these my sufferings unto me! and though I fall as a sacrifice to idols, suffer not idolatry to be established in this land. Bless thy people, and save them. Defend thy own cause, and defend those that defend it. Stir up such as are faint; direct those that are willing; confirm those that waver; give wisdom and integrity to all. Order all things so, as may most redound to thine own glory. Grant that I may die glorifying thee for all thy mercies; and that at the last thou hast permitted me to be singled out as a witness of thy truth, and even by the confession of my opposers, for that * OLD CAUSE in which I was

Upon * the revolution, such regard was had to his innocence and the justice due to his memory, that the Parliament made it one of their first acts to re-

(Upon the revolution,)*

See " A letter humbly addrest to the most excellent father of his country, the wise and victorious prince, King William III. By a dutiful and well-meaning subject (the Rev. Mr. Stephens, rector of Sutton, in Surry)."....London, printed by J. Darby, 1698, in quarto.

.....Nothing therefore could determine that unfortunate king (James II.) to depart once and again, but the fixt resolutions I have already mentioned, to carry through his scheme by force; for otherwise, and if he had been resolved to give up that scheme, after he saw such manifest proofs of the aversion of the whole nation and of his own family to it, it is easy and obvious to see what must have been his conduct: he would have remained in his palace and granted all the demands of the Prince of Orange's declaration: and agreed to the very thing which you now promise by yours, namely, to refuse nothing that a free Parliament could have asked, for the security of the religion, laws, and liberties of his people.

Now, as he might and ought to have done this, and did not do it, which was the only method of retaining his crown, consistent with that security of the religion and liberties of his people, it is evident that he did indeed abdicate his crown.

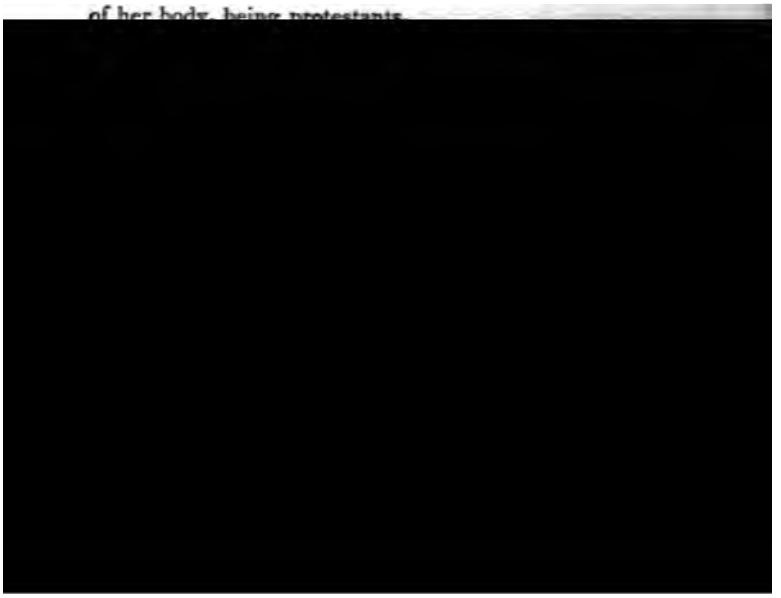
And in respect of the many essential miscarriages by him committed and persisted in, the people had undeniable reasons to declare the throne vacant; and having thus far done themselves justice, and provided for their own security against the evils of popery and slavery with which they had been threatened, it remained for them to provide for the future government of this kingdom by making a *new settlement.*

Here it was, that the wisdom and moderation of the leading men of this nation, at that time, was discovered: it was a regal government though limited by laws, and they resolved

peal his attainder, on the 13th of February, 1688-9; the preamble to the act being in the following words:

that it should continue such, justly dreading a relapse into the anarchy and confusions and the despotic government of the usurper, which had succeeded the abolition of the royal authority about the middle of that century.

It was a hereditary kingdom, though not indefeasibly such; and therefore they departed as little as possible from the regular course of succession in the royal family, and no farther than was necessary for securing the liberties of the subject. They acted as any wise and good man would do, who is master of his own estate. If his eldest son proves unworthy, and merits being disinherited, he will settle his estate on his second son and his issue in their order. And thus we settled the crown on the eldest daughter of the abdicated prince; and in default of her issue, on the second daughter; in default of her issue, on the Prince of Orange himself, who was the next in succession, if he should have any by another wife than the Princess Mary; and when the prospect of successors failed among the protestant descendants of King Charles the First, the nation looked out for the next protestant heir, who was a grandchild of King James the First, and settled the crown upon her and the heirs of her body, being protestants.



'Whereas Algernon Sydney, Esq. in the term of St. Michael, in the five and thirtieth year of the reign of our late sovereign lord King Charles the Second,

bear witness....that we are now in the 19th year of his reign, and hitherto not one drop of blood shed for a state-crime, even in the legal methods of trial, though there have not been wanting occasions, even before YOU was pleased to make us a visit, for just severities of that kind.

Of this prince, now reigning, the nation is blessed with a numerous and hopeful issue; whereof the greater part have been born and educated amongst ourselves.

And the case so standing, in respect to the abdication of your grandfather, and the succeeding *new settlement* of the crown in the protestant line of the royal family, which has already taken effect during the space of fifty-seven years, which you mention as the duration of the exile of your family, and urge as being more than sufficient atonement for the miscarriages of your grandfather; you come, sir, a great deal too late with your professions of repentance and promises of amendment; for as I began with the question of expediency, I am now considering the question of right and strict justice, and by this you are cut off, independent of the former.

This is indeed the true state of the question, where the right and title now lies; and upon this I maintain, that supposing a great deal which is not true, that your family was not still popish, bred at Rome, and favoured by France the natural enemy of Great Britain, and the common enemy of the liberties of Europe; supposing you were sincere in your promises, and that your religion did not authorise and require you to break them; and supposing you personally, as I am willing to believe, possessed of many good qualities becoming a prince, still you come too late; we cannot listen to your declaration, though you should lift up your voice like Esau, and cry, Have you but one blessing, O my people? For it is true that we have but one, and that is already conferred on thy protestant brother; and we cannot with justice deprive him of it, supposing we

in the court of king's-bench at Westminster, by means of an unlawful return of jurors, and by denial of his lawful challenges to divers of them, for want of

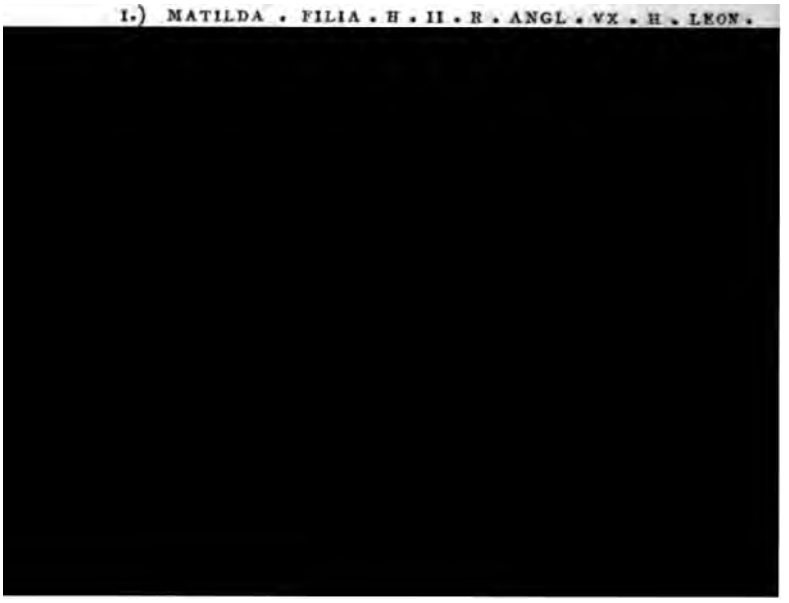
could do it with prudence, or consistently with the security of our religion, laws, and liberties.

And to make you sensible of the force of this consideration, if you can see the truth when it is repugnant to your own interest and wishes, suffer me, etc. etc. etc.

The Occasional Writer (a very fine liberty-tract): Or an answer to the second manifesto of the Pretender's eldest son, which bears date at the Palace of Holy-Rood-House, Oct. 10, 1745; Containing reflections political and historical upon the last Revolution, and the progress of the present Rebellion in Scotland. *Tandem triumphans*, Motto to the Pretender's standard. *Nondum immemores*, Answer. The second edition, corrected....London, printed for A. Millar, 1746, in octavo.

The *new settlement* before mentioned, seems to have been gratefully perpetuated by that excellent prince, George I. in the following medals or rather medaglions, which, it is apprehended, were struck at Hanover by his orders:

I.) MATILDA . FILIA . H . II . R . ANGL . VX . H . LEON .



freehold, and without sufficient legal evidence of any treasons committed by him; there being at that time produced a paper, found in the closet of the said Algernon, supposed to be his hand-writing; which was not proved by the testimony of any one witness, to be written by him; but the jury was directed to believe it, by comparing it with other writings of the said Algernon: and besides that paper so produced, there was but one single witness to prove any matter against the said Algernon; and by a partial and unjust construction of the statute declaring what was his treason, was most unjustly and wrongfully convicted and attainted, and afterwards executed for high treason: may it therefore please your excellent majesties, at the humble petition and request of the right honourable Philip, Earl of Leicester, brother and heir of the said Algernon Syd-

III.) GEORGIVS . D . G . MAG . BRIT . FR . ET . HIB . REX. Bust of the King, in profile.

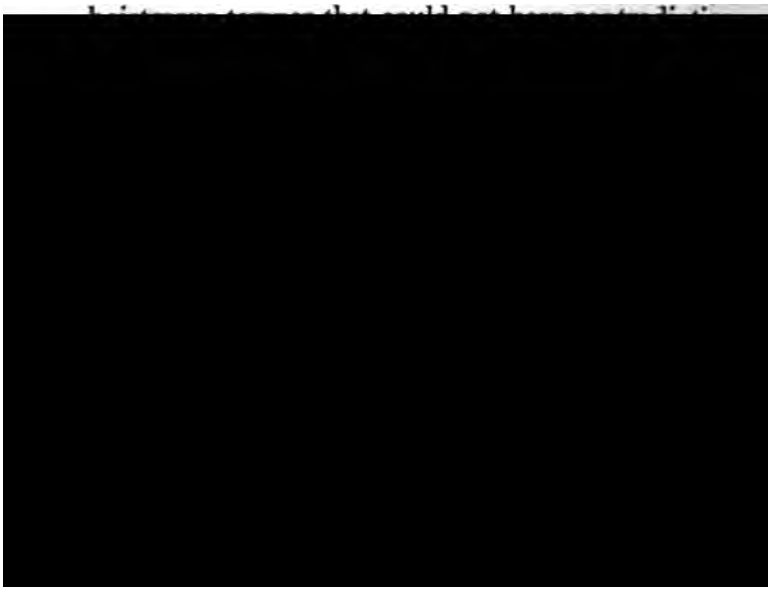
PRINC . OPT . RELIGIONIS . ET . LIBERTATIS . CVSTODI . Britannia presenting the Regalia to the King, who is accompanied by religion and liberty. In the exurge, PVBLICA . AVCTORITATE . PROCLAMATO . I AUG . ANNO . MDCCXIIII .

XII

Three smaller medals, about the sizes of a crown, half crown, and shilling, where likewise struck by him; the faces of which agree with medal II, but the reverses bear only the following inscription: NATA . XIII . OCT . MDCXXX . NVPTA . MENSE . SEPT . MDCLVIII . AD . SVCCESSIONEM . M. BRIT . NOMINATA . MDCCI . SVB . VESPERAM . VIII . IVNII . MDCCXIV . IN . HORTIS . HERRENHAVSANIS . ADHVC . VEGETO . ET . FIRMO . PASSV . DEAMBVLANS . SVBITA . ET PLACIDA . MORTE . ERREPTA .

ney, and of the right honourable Henry Viscount Sydney, of Sheppey, the other brother of the said Algernon, that it be declared and enacted, &c. That the said conviction and attainder be repealed, reversed, &c. And to the end that right be done to the memory of the said Algernon Sydney, deceased, be it further enacted, That all records and proceedings relating to the said attainder be wholly cancelled and taken off the file, or otherwise defaced and obliterated, to the intent that the same may not be visible in after ages: and that the records and proceedings relating to the said conviction, judgment, and attainder, in the court of king's-bench, now remaining, shall and be forthwith brought into the court this present Easter term, and then and there be taken off the file and cancelled.'

Bishop Burnet's character of him is, 'That he was a man of most extraordinary courage; a steady man, even to obstinacy; sincere, but of a rough and



branches, beyond any man I ever knew. He had a particular way of insinuating himself into people,

Lords and Commons of England, consider what nation it is whereof ye are, and whereof ye are the governours. A nation not slow and dull, but of a quick, ingenious and piercing spirit, acute to invent, suttle and sinewy to discourse, not beneath the reach of any point the highest that human capacity can soar to. Therefore the studies of learning in their deepest sciences have been so ancient, and so eminent among us, that writers of good antiquity, and ablest judgment, have been perswaded that even the school of Pythagoras and the Persian wisdom, took beginning from the old philosophy of this island. And that wise and civil Roman, Julius Agricola, who governed once here for Cæsar, preferred the natural wits of Britain, before the laboured studies of the French.....Behold now this vast city; a city of refuge, the mansion house of liberty, encompast and surrounded with his protection; the shop of warre hath not there more anvils and hammers waking, to fashion out the plates and instruments of armed justice in defence of beleaguered truth, than there be pens and heads there, sitting by their studious lamps, musing, searching, revolving new notions and ideas wherewith to present, as with their homage and their fealty, the approaching reformation; others as fast reading, trying all things, assenting to the force of reason and convincement. What could a man require more from a nation so pliant and so prone to seek after knowledge. What wants there to such a towardly and pregnant soile, but wise and faithful labourers, to make a knowing people, a nation of prophets, of sages, and of worthies....

Areopagitica. A speech of John Milton, for the liberty of Unlicenced Printing. (GVARD IT YE BRITONS!) To the Parliament of England....London, printed in the year 1644, in quarto.

Cromwell seemeth to be distinguished in the most eminent manner, with regard to his abilities, from all other great and wicked men, who have overturned the liberties of their coun-

that would hearken to his *notions, and not contradict him.'

try. The times in which others succeeded in this attempt, were such as saw the spirit of liberty suppressed and stifled by a general luxury and venality: but Cromwell subdued his country, when this spirit was at its height, by a successful struggle against court oppression; and while it was conducted and supported by a set of the greatest geniuses for government the world ever saw.

The very eminent prelate, Dr. Warburton, in his notes on Pope's Essay on Man.

Cromwell was one of those geniuses who are oft times buried in obscurity, through want of occasion of being known. Thousands spend their lives in retirement, who are capable of greater things than most of those whose names are tossed from every tongue and voiced for wise, skilful, able, valiant. In times of peace these men are little known or noticed. They are overlooked among the herd, or treated with a coolness or disregard, that damps their ambition and establishes their virtue, etc.

The Rev. William Harris, a sensible, candid writer, in his "Historical and critical account of the life of O. Cromwell."

† Several manuscript treatises of his in Latin and Italian, and an "Essay on virtuous love," in English, are still extant among the papers of his family

rupted in both our Universities, beside the conversation of divers eminent divines, as to matters theological; I had the opportunity of being acquainted with divers worthy persons, inquisitive into natural philosophy and other parts of human learning; and particularly of what hath been called, the new philosophy, or experimental philosophy.

"We did by agreement, divers of us, meet weekly in London, on a certain day, to treat and discourse of such affairs. Of such number were Dr. John Wilkins, afterward bishop of Chester, Dr. Jonathan Goddard, Dr. George Ent, Dr. Glisson, Dr. Merret, doctors in physic, Mr. Samuel Foster, then professor of astronomy at Gresham College; Mr. Theodore Haak, a German of the Palatinate, and then resident in London (who, I think, gave the first occasion and first suggested those meetings) and many others.

"These meetings we held sometimes at Dr. Goddard's lodgings in Wood-street, or some convenient place near, on occasion of his keeping an operator for grinding glasses for telescopes and microscopes; and sometimes at a convenient place in Cheapside; sometimes at Gresham College, or some place near adjoining.

"Our business was, precluding matters of theology and state affairs, to discourse and consider of philosophical enquiries, and such as related thereunto; as physic, anatomy, geometry, astronomy, navigation, statics, magnetics, chymics, mechanics and natural experiments, with the state of these studies, as then cultivated, at home and abroad.

"About the year 1648 or 1649, some of us being removed to Oxford, first Dr. Wilkins, then I, and soon after Dr. Goddard, our company divided. Those in London continued to meet there, as before, and we with them, when we had occa-

† *Note....See next page.*

at Penshurst: but his "Discourses concerning Government" alone will immortalize his name, and are sufficient to supply the loss of Cicero's six books

sion to be there. And those of us at Oxford, with Dr. Ward, since bishop of Salisbury; Dr. Ralph Bathurst, now president of Trinity College in Oxford; Dr. Petty, since Sir William Petty; Dr. Willis, then an eminent physician in Oxford, and divers others, continued such meetings in Oxford, and brought those studies into fashion there; meeting first at Dr. Petty's lodgings in an apothecary's house, because of the convenience of inspecting drugs, and the like, as there was occasion; and after his remove to Ireland, though not so constantly, at the lodgings of Dr. Wilkins, then warden of Wadham College; and after his removal to Trinity College in Cambridge, at the lodgings of the honourable Mr. Robert Boyle, then resident for divers years in Oxford.

"Those meetings in London continued; and, after the king's return in 1660, were increased with the accession of divers worthy and honourable persons; and were afterwards incorporated by the name of "The Royal Society," etc. and so continue to this day."

* Notions! a strange word after what had been just before declared. But the character is roughly, inaccurately drawn.

"De Republica," which has been so much regretted by men of sense and probity. In short, * it is one of the noblest books that ever the mind of man pro-

(It is one of the noblest books that ever the mind of man produced.)*

Many circumstances at present call loudly upon us to exert ourselves. Venality and corruption have well nigh extinguished all principles of liberty. The bad books also that this age hath produced, have ruined our youth. The novels and romances which are eagerly purchased and read, emasculate the mind, and banish every thing grave and manly. One remedy for these evils is, to revive the reading of our old writers, of which we have good store, and the study whereof would fortify our youth against the blandishments of pleasure and the arts of corruption.

MILTON in particular ought to be read and studied by all our young gentlemen, as an oracle.

He was a great and noble genius, perhaps the greatest that ever appeared amongst men; and his learning was equal to his genius. He had the highest sense of liberty, glorious thoughts, with a strong and nervous style. His works are full of wisdom, a treasure of knowledge. In them the divine, the statesman, the historian, the philologist, may be all instructed and entertained. It is to be lamented that his divine writings are so little known. Very few are acquainted with them, many have never heard of them. The same is true, with respect to another great writer, contemporary with Milton, and an advocate for the same glorious cause; I mean Algernon Sydney, whose 'Discourses Concerning Government,' are the most precious legacy to these nations.

All antiquity cannot shew two writers equal to these. They were both great masters of reason, both great masters of expression. They had the strongest thoughts, and the boldest images, and are the best models that can be followed. The style of Sydney is always clear and flowing, strong and masculine. The great Milton has a style of his own, one fit to ex-

duced; and we cannot wish a greater or more extensive blessing to the world, than that it may be every

press the astonishing sublimity of his thoughts, the mighty vigour of his spirit, and that *copia* of invention, that redundancy of imagination, which no writer before or since hath equalled. In some places, it is confessed, that his periods are too long, which renders him intricate, if not altogether unintelligible to vulgar readers; but these places are not many. In the book before us, his style is for the most part free and easy, and it abounds both in eloquence and wit and argument. I am of opinion that the style of this work is the best and most perfect of all his prose writings. Other men have commended the style of his history as matchless and incomparable, whose malice could not see or would not acknowledge the excellency of his other works. It is no secret whence their aversion to Milton proceeds; and whence their caution of naming him as any other writer than a poet. Milton combatted superstitions of every form, and in every degree. Against them he employed his mighty strength, and, like a battering-ram, beat down all before him. But notwithstanding these mean arts either to hide or to disparage him, a little time will make him better known; and the more he is known, the more he will be admired. His works are not like the fugitive, short-lived things of this

where read, and its principles universally received and propagated.

soveraigns; and again of controlling those controllers; with the effusion of so much blood, as I think I may truly say, there never was any thing so dearly bought, as these western parts have bought the learning of the Greek and Latine tongues."

The accomplished, beneficent Earl of Shaftesbury, in his "Essay on the freedom of wit and humour" remarks on this passage, "And yet an able and witty philosopher of our nation was, we know, of late years, so possessed with a horrour of this kind, that both with respect to politics and morals, he directly acted in this spirit of MASSACRE. The fright he took upon the sight of the then governing powers, who unjustly assumed the authority of the people, gave him such an abhorrence of all popular government, and of the very notion of liberty itself; that to extinguish it for ever, he recommends the very extinguishing of letters, and exhorts princes not to spare so much as an ancient Roman or Greek historian. Is not this in truth somewhat Gothic? And has not our philosopher, in appearance, something of the savage, that he should use philosophy and learning as the Scythians are said to have used Anacharsis and others, for having visited the wise of Greece and learnt the manners of a polite people? And, in the notes, he adds, "By this reasoning of Mr. Hobbes it should follow, that there can never be any tumults or deposing of sovereigns at Constantinople or in Mogol."

The Trial

OF

ALGERNON SYDNEY.

THE ARRAIGNMENT, TRIAL, AND CONDEMNATION OF ALGERNON SYDNEY, FOR HIGH TREASON, FOR CONSPIRING THE DEATH OF THE KING, AND INTENDING TO RAISE A REBELLION IN THIS KINGDOM. BEFORE THE RIGHT HON. SIR GEORGE JEFFREYS, KNIGHT AND BARONET, LORD CHIEF JUSTICE OF ENGLAND: AT HIS MAJESTY'S COURT OF KING'S-BENCH AT WESTMINSTER, ON THE SEVENTH, TWENTY-FIRST, AND TWENTY-SEVENTH OF NOVEMBER, MDCLXXXIII.

THE ARRAIGNMENT, NOV. 7.

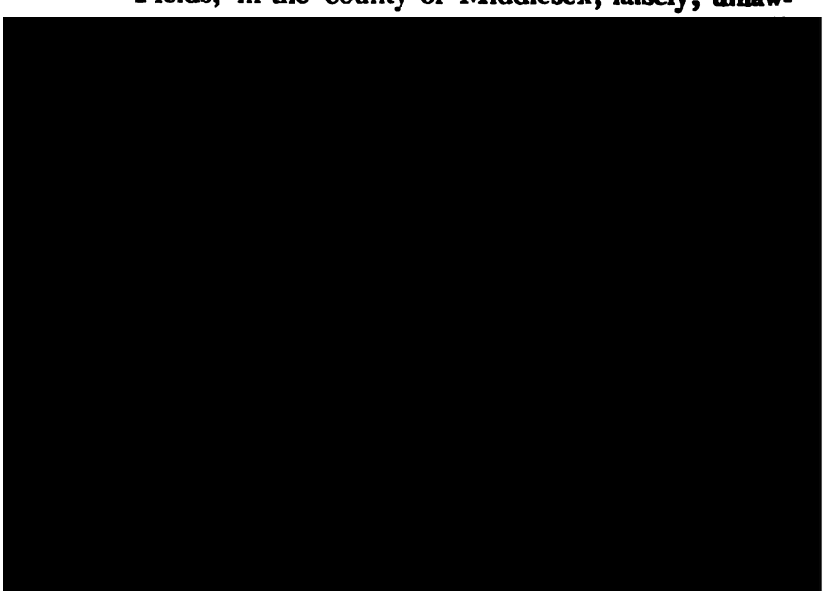
ALGERNON SYDNEY, Esquire, was by *habeas corpus* brought up to the bar of the court of king's-bench; and the clerk of the crown having read the return, Mr. Attorney-General informed the court, there was an indictment against the prisoner, and prayed he might be charged with it.

Clerk of the Crown. Algernon Sydney, hold up thy hand [which he did].

Midd. ss. The jurors for our lord the king upon oath do present, that Algernon Sydney, late of the parish of St. Martin in the Fields, in the county of Middlesex, Esquire, as a false traitor against the most illustrious, most excellent prince, our lord Charles the Second, by the grace of God king of England, Scotland, France, and Ireland, and his natural lord; not having the fear of God in his heart, nor weighing the duty of his allegiance, but moved and seduced by the instigation of the devil, utterly withdrawing the cordial love, and true, due, and natural obedience which a true and faithful subject of our said lord the king should bear towards him the said lord the king, and of right is bound to bear; contriving, and with all his strength intending, to disturb the peace and common tranquillity of this kingdom of England, and to stir up and move war and rebellion against the said lord the king, and to subvert the government of the said lord the king, in this kingdom of England, and to depose and deprive the said lord the king from the title, honour, and regal name, of the imperial

only from the regal state, title, power, and rule of his kingdom of England, but also to kill, and bring and put to death, the same lord the king, and to change, alter, and utterly subvert, the ancient government of this his kingdom of England, and to cause and procure a miserable slaughter among the subjects of the said lord the king through his whole kingdom of England, and to move and stir up an insurrection and rebellion against the said lord the king, within this kingdom of England. And to fulfil and perfect those his most horrid, wicked, and diabolical treasons, and traitorous compassings, imaginations, and purposes, the same Algernon Sydney, as a false traitor, then and there, and divers other days and times, as well before as after, maliciously, traitorously, and advisedly, did assemble himself, meet and consult with the aforesaid other traitors to the jurors aforesaid unknown, and with the same traitors did treat of, and for, those his treasons and traitorous compassings, imaginations, and purposes, to be executed and fulfilled. And that the aforesaid Algernon Sydney, as a false traitor, maliciously, traitorously, and advisedly, then and there, and divers other days and times, as well before as after, upon himself did assume, and to the aforesaid other traitors did promise, that he would be aiding and assisting in the execution of their treasons and traitorous compassings, imaginations, and purposes aforesaid. And to fulfil, perfect, and reduce to effect, those their most horrid treasons and traitorous compassings, imaginations, and purposes aforesaid, the same Algernon Sydney, as a false traitor, then and there, falsely, maliciously, ad-

visedly, and traitorously, did send one Aaron Smith into Scotland, to invite, procure, and incite divers evil disposed subjects of our said lord the king, of his kingdom of Scotland, to come into this kingdom of England, to advise and consult with the aforesaid Algernon Sydney, and the aforesaid other unknown traitors in this kingdom of England, of aid and assistance to be expected and supplied from the kingdom of Scotland to fulfil, perfect, and reduce to effect, those their most wicked, horrid, and traitorous treasons aforesaid. And that the aforesaid Algernon Sydney, to fulfil and perfect those most wicked, horrid, and devilish treasons, and traitorous compassings, imaginations and purposes aforesaid, and to persuade the subjects of the said lord the king of this kingdom of England, that it is lawful to make and stir up an insurrection and rebellion against the said lord the king that now is, the said thirtieth day of June, in the five and thirtieth year of the reign of the said lord the king that now is, at the parish of St. Giles in the Fields, in the county of Middlesex, falsely, unlaw-



" he is a king: the law sets a measure unto that sub-
" jection, and the Parliament judges of the particular
" cases thereupon arising. He must be content to
" submit his interest unto theirs, since he is no more
" than any one of them in any other respect than that
" he is, by the consent of all, raised above any other.
" If he doth not like this condition, he may renounce
" the crown; but if he receive it upon that condition,
" (as all magistrates do the power they receive) and
" swear to perform it, he must expect that the per-
" formance will be exacted, or revenge taken by
" those that he hath betrayed." And that in another place in the said false, seditious, and traitorous libel, among other things, these false, seditious, and traitorous English sentences are contained (that is to say) " We may therefore change or take away kings, " without breaking any yoke; or that is made a yoke " which ought not to be one: the injury is therefore " in making or imposing, and there can be none in " breaking it." Against the duty of his allegiance, against the peace of the said now lord the king, his crown and dignity, &c. And against the form of the statutes in this case made and provided, &c.

How sayest thou, art thou guilty of this high treason whereof thou standest indicted, or not guilty?

Col. Sydney. My lord, I find here an heap of crimes put together, distinct in nature one from another, and distinguished by law; and I do conceive, my lord, that the indictment itself is thereupon void, and I cannot be impeached upon it.

Lord Chief Justice. We are not to admit any discourses till you answer the question, whether you are guilty, or not guilty.

Mr. Att. Gen. [Sir Robert Sawyer, knt.] If he will demur, my lord, we will give him leave.

Col. Sydney. I presume your lordship will direct me, for I am an ignorant man in matters of this kind, I may easily be surprised in it, I never was at a trial in my life of any body, and never read a law-book.

L. C. J. Because no prisoner under your circumstances is to have counsel, but in special cases to be assigned in matters of law, the court is bound by their oaths and duty of their places, that they shall not see any wrong done to you: but the business we are to tell you now is, you are to plead guilty or not guilty, or demur, which is a confession in point of law.

Col. Sydney. Under favour, my lord, there may

and offered him to do it; that which, under favour, I hope to do.

L. C. J. You must plead or demur.

Col. Sydney. My lord, if I put in exceptions to the bill, I don't plead till those exceptions are over-ruled. This was in the case of Sir Henry Vane.

L. C. J. Sir, I must tell you, you must either plead, or demur.

Col. Sydney. My lord, there are in this indictment some treasons, or reputed treasons, that may come within the statute of the 13th of this king, which is limited by time; the prosecution must be in six months, and the indictment within three. Now, my lord, if this business that is mentioned be above six months, before my commitment, or above three before the indictment, I think, under favour, I ought not to answer to these matters.

L. C. J. You are mistaken in the law. That will be saved when the fact comes to appear. If they alledge the things to be at a time, which according to that allegation would maintain the indictment; if upon the trial it appear otherwise, the court is bound to take notice of it, when you come to your trial: but we are not bound to examine that before you have pleaded.

Col. Sydney. My lord, every body will acknowledge, that there have been, or may be, vicious indictments. Now if I plead to an erroneous indictment, and am acquitted, I may be indicted again. Bills of attainder have been upon errors in original indictments, as that of the duke of Somerset. Now if there be several things distinct in nature, and distinguished by law, that are put together, 'tis impossible to make a positive answer to any one. If any one should tell me that I by myself, or by others, by sword or by pistol, conspired to kill the king, I can say, I did it, or I did it not. If any one say, I have levied war, and by several acts undertake to prove I have done it, I can say I have done it, or I have not. But here I don't find any thing specified, nor can tell upon what statute I am indicted. I pray, I may see the record.

L. C. J. That we can't do. You shall hear it read again if you will. If you think it to be a void

L. C. J. If you can assign any matter of law, do. But otherwise, what a kind of thing would it be? All criminals would say in all cases, I doubt whether the bill be good or bad, and after I have thus considered of it, I will plead. You are mis-informed; and this the court tells you, as a duty incumbent on them.

Mr. Just. Wythins. If you demur, and shew what your causes are, we will assign you counsel.

Col. Sydney. I desire you would not try me, and make me to run on dark and slippery places. I don't see my way.

L. C. J. Don't apprehend yourself to be so, as if the court would run you on any inconvenience. But they are bound to see the methods of justice preserved; they are those that you, and all the king's subjects, are bound to conform to. If any one of us were in the same condition, we must observe the same methods of law.

Clerk of the Crown. Art thou guilty, or not guilty?

Col. Sydney. Then pray, my lord, will you tell me this: Is it true, that a man, how vicious soever an indictment is, must answer or demur to it?

L. C. J. He must either answer or demur.

Col. Sydney. Are there no exceptions to be admitted?

L. C. J. None. And if you don't do the one, or the other, judgment passes as if you had pleaded.

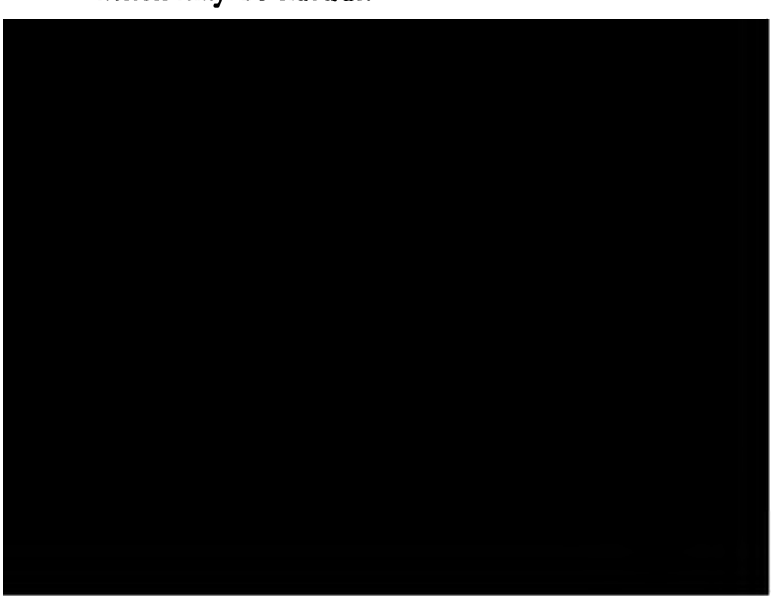
Col. Sydney. This is a plea.

Mr. Just. Wythins. Will you stand by it? Consider yourself, and your life. If you put in that plea, and Mr. Attorney demurs, if your plea be not good, your life is gone.

Col. Sydney. Pray, my lord, give me a day to consider of it.

L. C. J. No. We must not introduce new methods or forms for any body. The same case that is with you, may be with other people.

Col. Sydney. My lord, I do not pretend to any thing but what is law, and due to every man upon English ground. I would be very sorry to do that which may be hurtful.



liams exceeds his liberty, he informs the prisoner of several things.

Mr. Williams. I only said, if it was a plea, put it in. Mr. Attorney can hear all I say. [*Whereupon Mr. Williams was reproved by the Lord Chief Justice.*]

Col. Sydney. I only give it as exceptions to the bill.

Clerk of the Crown. Art thou guilty or not guilty?

Col. Sydney. If any one should ask me any particular thing, I could tell how to answer.

L. C. J. He asks you a particular thing. 'Tis the duty of the court to pronounce judgment, if you do not plead.

Col. Sydney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no gentleman of the long robe would put any such thing into your head. There was never any such thing done in capital matters.

Col. Sydney. My lord, I am there indicted for conspiring the death of the king; I have not conspired the death of the king. I am there indicted for levying of war, I have not done that. I am in-

dicted for having invited in others, of another nation, I have not done that neither. I am there indicted to have written a seditious libel to stir up the spirits of the people against the king, I have not written any thing to stir up the people against the king....

L. C. J. We are not to hear all this. You must plead as other people; or else, in plain English, we will pronounce sentence. We ought to give all men satisfaction that will be satisfied; but if they won't be directed, we can't help that.

Col. Sydney. My lord, if you put me upon this inevitable necessity, it lies upon you; I must plead then.

Clerk of the Crown. Art thou guilty, or not guilty?

Col. Sydney. Not guilty.

Clerk of the Crown. Culprit, how wilt thou be tried?

Col. Sydney. By God and my country.

Clerk of the Crown. God send thee a good deliverance.

L. C. J. If you be not guilty, I pray God you may escape.

Mr. Att. Gen. My lord, will you please to ap-

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L. C. J. No.

Col. Sydney. I have several points of law.

L. C. J. Tell us them.

Col. Sydney. My lord, will you oblige me, that am an ignorant man, and confess myself so, upon hearing my indictment for things I know not of, a long thing, presently to raise a point of law.

L. C. J. 'Tis not we oblige you, Mr. Sydney; 'tis the law obliges you. We are the ministers of the law. 'Tis the law says, we are not to allow you counsel without making your objections, that the court may understand whether it be fit; 'tis the law says, we may not allow you a copy of the indictment: therefore don't go away and say that we as men sitting here impose upon you: we sit here only to administer the justice of the nation.

Col. Sydney. Yes, if you please, I do understand a little Latin. [*Then the indictment was read in Latin.*]

Col. Sydney. What is that statute?

L. C. J. When you come to your trial, Mr. Attorney will tell you what statute he goes upon. And he may give in evidence any act of Parliament that comprehends treason.

Col. Sydney. Methinks he should say what statute he goes upon.

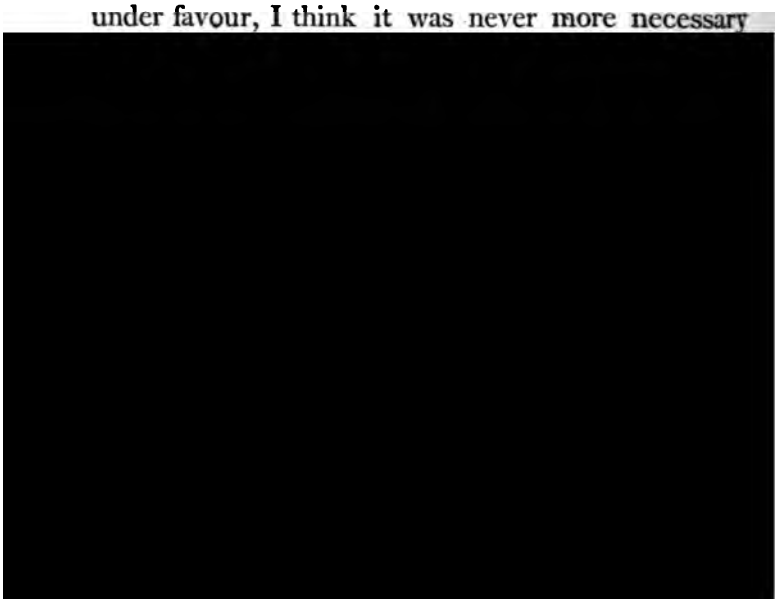
Mr. Just. Wythins. Sir, would you have a new indictment for you?

L. C. J. He must take notice of his trial this day fortnight. Lieutenant of the Tower, you may take the prisoner back again. [*Then the lieutenant of the Tower took away his prisoner.*]

THE TRIAL, NOV. 21.

ALGERNON SYDNEY, Esquire, was brought to the bar of the court of king's-bench by *habeas corpus;* and proclamation for information being made, he desired pen, ink, and paper, which were granted him. And he also desired, that two persons, viz. Mr. Wynn and Mr. Gibbs, might write for him, which was also allowed by the court.

Col. Sydney. My lord, when I was last here before your lordship, I did desire a copy of my indictment, and I thought the law did allow it me. But being in an hurry, carried first to a tavern, then led through soldiers, and surprized absolutely, I could not give that reason why I thought the law allowed me a copy. My lord, I was denied a copy, and thereby I was deprived of the benefit of a special plea I designed to have put in. This would have been a great help to your lordship, and to me; the denial of which hath been a great prejudice. Now, my lord, that which I thought was law then, I think I can give a better testimony that 'tis so now, upon the statute of 46 E. 3, wherein 'tis expressed, that *tout partes & tout gents*, that is, all people shall have a copy of every record; and it enumerates several matters, as well that against the king as other people. This is a general law still in force. My lord Strafford had a copy, and my lord Stafford, and the lords in the Tower, had copies of their indictments: and, under favour, I think it was never more necessary



notwithstanding all that case, we ought not to have given you so much favour (perhaps in strictness) as we did. And because you did particularly take notice of the case of Sir Henry Vane last time, I will shew you the court did indulge more to you, than was done to that person. In Sir Henry Vane's case, by the opinion of all the judges it was declared, that no copy ought to be given, neither of the whole, nor any part of the indictment, except they shew matter of law. But your counsel, since you went away, moved for the copy of the indictment; and, to satisfy them, I directed the case that you took notice of to be read in the court. And I thought they had been sufficiently satisfied. You had the indictment read to you in Latin, which was denied in the case of Sir Henry Vane. And there is a later case, known to most persons here. By the opinion of all the judges of England, a copy of the indictment was denied to my lord Russel. Therefore arraign him upon the indictment. We must not spend our time in discourses to captivate the people.

Col. Sydney. Is not this a good law, my lord? [*Holding out a paper.*]

L. C. J. You have the rule of the court.

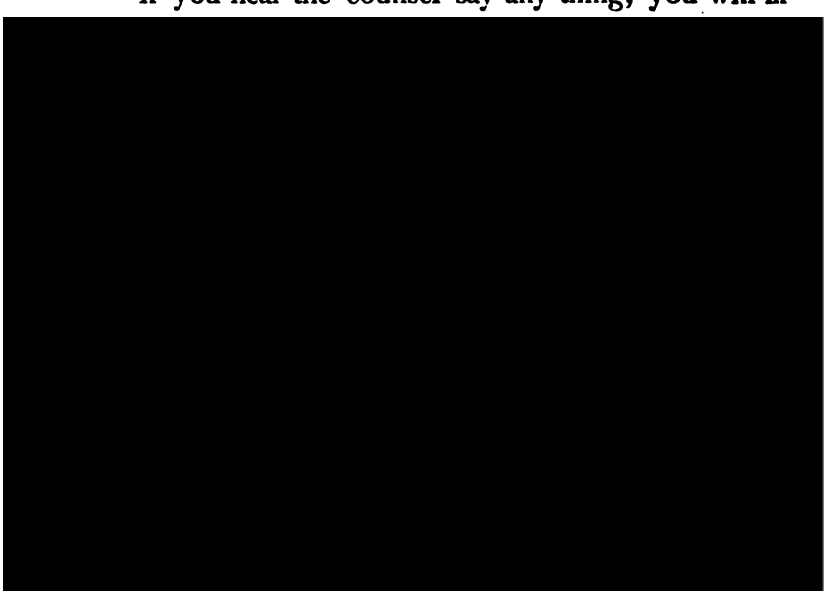
Mr. Just. Wythins. Any thing the law will allow you, you shall have: but I am sure, if you did advise with your counsel, they must tell you the same thing.

So the clerk of the crown called the jury; and, after several challenges, the names of the jury were as follow:

THE JURY.

John Amger,	*Josias Clerke*,
Richard White,	*George Glisby*,
William Linn,	*Nicholas Baxter*,
Lawrence Wood,	*William Reeves*,
Adam Andrews,	*William Grove*,
Emery Arguise,	*John Burt*.

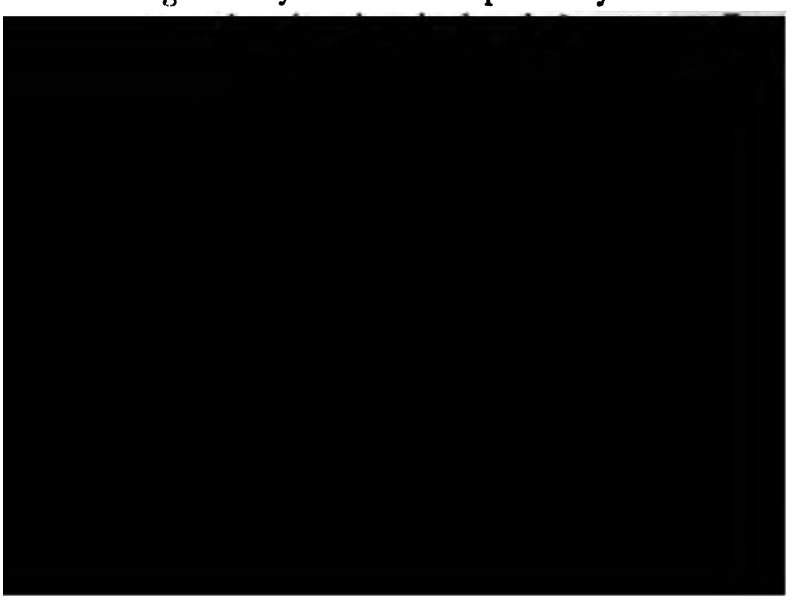
L. C. J. Look you, gentlemen of the jury: there are some gentlemen at the bar, as we are informed, are apt to whisper the jury; 'tis no part of their duty, nay, 'tis against their duty: and therefore, gentlemen, if you hear any of them by you, that offer to whisper, or make comments in this cause, as you are upon your oaths, and I doubt not will do your duty between the king and the prisoner; so I expect, if you hear the counsel say any thing, you will in-



you gentlemen that are sworn. This is an indictment of high treason preferred against Algernon Sydney, the prisoner at the bar. The indictment sets forth, That he, as a false traitor against our most illustrious prince Charles the Second, his natural lord, not having the fear of God in his heart, &c. on the thirtieth of June, in the thirty-fifth year of the king, and divers other days and times, as well before as after, in the parish of St. Giles in the Fields, in the county of Middlesex, traitorously, with divers traitors unknown, did conspire the death of the king, and to levy war within this kingdom. And to complete these traitorous purposes did then and there maliciously, advisedly, and traitorously, send one Aaron Smith into Scotland, to excite some ill-disposed persons of that kingdom to come into this, and to consult with the said Algernon Sydney, and other traitors, of and upon assistance from the kingdom of Scotland, to carry on those designs. And the indictment sets forth further, that to persuade the people of England it was lawful to raise rebellion, the said Algernon Sydney did cause to be written a false, seditious libel, in which is contained these English words, "The power originally in the people of England is delegated unto the Parliament. The king is subject to the law of God, as he is a man; to the people that makes him a king, inasmuch as he is a king: the law sets a measure unto that subjection," &c. as in the indictment. This is laid to be against the duty of his allegiance, against the peace of the king, his crown and dignity, and against the form of the statute in that case made and provided.

If we prove him guilty, we doubt not but you will find it.

Mr. Att. Gen. My lord, and you gentlemen of the jury, the prisoner at the bar stands indicted of the highest crimes, the conspiring the death of the king, and the overthrow of the English monarchy. Gentlemen, we shall use this method in our evidence. We shall shew by many witnesses, that there was a design of raising and making a rebellion within this kingdom. For, gentlemen, you must take notice, and I think there is no Englishman but does believe, that for several years last past a design was laid, and for that purpose several secret insinuations were made use of, and public libels spread abroad, to persuade the people that the king was introducing arbitrary power, that he subverted all their rights, liberties, properties, and whatever was dear to them. They endeavoured to make the world believe the king was a papist. And when, gentlemen, by such stratagems they had worked upon many incautious



shall then come to shew you what share and part the prisoner had in this design. For certainly he was looked upon as a very eminent person, whose education abroad, and former practices at home, had rendered him fit to advise and proceed in such affairs. We shall prove, when these matters were ripe, this gentleman was of the council of state, of the six that were to manage this matter of the rising. We shall shew the several consultations they held; one at Mr. Hambden's house, another at the house of my lord Russel. There we shall acquaint you what debates they had, for they acted like very subtle men, and there they debated, whether the rising should be first in the country, or city, or both together. They came to a resolution it should be in both places at once. Then when they had asserted that point, they come to consider the time of rising; and upon that they thought fit to call in aid from Scotland first; and that was this gentleman's particular province: for he, being a man of great secrecy, was to send an emissary into that kingdom, and invite some persons over to treat with them about it. We shall prove that an emissary was sent, and this gentleman gave him a considerable sum to bear his charges. We shall prove that several Scotch gentlemen, in pursuance of this resolve, came here to treat with this great council of state, about this affair: and shall make it appear to you, that as soon as ever the least discovery of this plot was, these persons concealed themselves and withdrew, as the rest of the plotters that have fled from justice.

Gentlemen, this was not enough for this gentleman, to preach in these several passages: but to demonstrate to the world that his head and heart was bent in this service, and that he might carry it on the more effectually, he was at this very time, when this embassy was gone into Scotland, preparing a most seditious and traiterous libel: we instance in some particular words of it: but we shall shew you, that the whole design of this treatise is to persuade the people of England, that it is lawful, nay, that they have a right to set aside their prince, in case it appear to them that he hath broken the trust laid upon him by the people. Gentlemen, he does use in that treatise several arguments drawn from the most seditious times that ever were in England, even the late rebellion. I must needs use that word notwithstanding, for the act of oblivion, when a gentleman shall not attempt to do those things for which he was pardoned then, and from other kingdoms where it has not been prosperous against princes. Then he falls to reasoning, and uses great reason in

his confederates, that thought himself not only able to govern this nation, but many monarchies, should call him to account for it? For he lays down this principle, That though all the people do rise against their prince, it is no rebellion. The whole book is an argument for the people to rise in arms, and vindicate their wrongs. He lays it down, "That the king has no authority to dissolve the Parliament; but 'tis apparent the king hath dissolved many; therefore he hath broken his trust, and invaded our rights." And at last concludes with that passage laid in the indictment, "We may therefore shake off our yoke; for 'tis not a yoke we submitted to, but a yoke by tyranny, that must be the meaning of it they have imposed on us."

Gentlemen, if we prove all these matters to you, I doubt not you will do right to the king and kingdom, and shew your abhorrence of those republican principles; which, if put in practice, will not only destroy the king, but the best monarchy in the world.

Mr. Sol. Gen. [Heneage Finch, Esq.] Pray call Mr. West. [*Who appeared.*]

Col. Sydney. I pray one word, my lord, before Mr. West be sworn. I have heard, my lord, Mr. West hath confessed many treasons, and I desire to know whether he is pardoned, or no.

L. C. J. I don't know that.

Col. Sydney. My lord, how can he be a witness then?

L. C. J. Swear him, for I know no legal objection against him. He was a good witness in my lord Russel's trial.

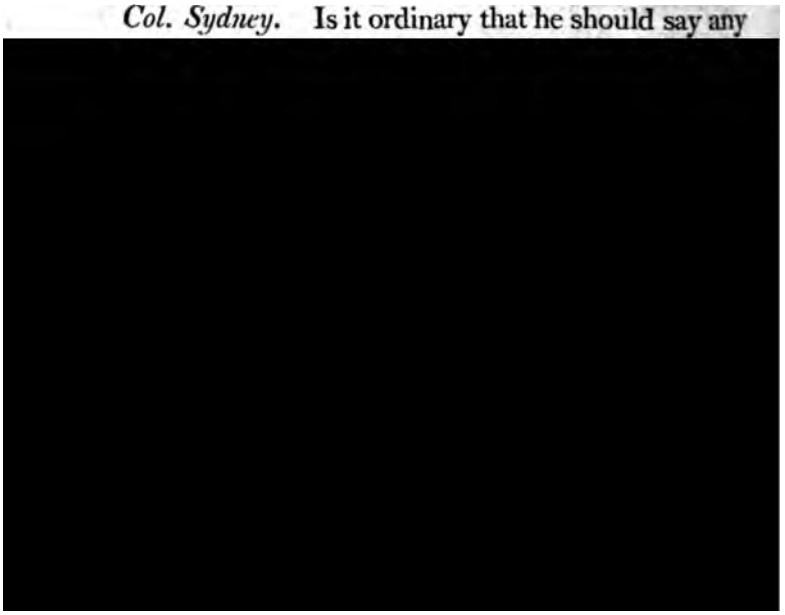
Col. Sydney. My lord, if another did not except against him, 'tis nothing to me.

Mr. North. Pray give an account to the court of what you know of a general insurrection intended in England.

Col. Sydney. What he knows concerning me.

L. C. J. We will take care of that, that no evidence be given but what ought to be.

Col. Sydney. Is it ordinary that he should say any



Mr. West. My lord, I have had the honour to know Colonel Sydney several years; but I don't remember that I ever saw him from the time I came acquainted with any part of the conspiracy, till the discovery that was at the council.

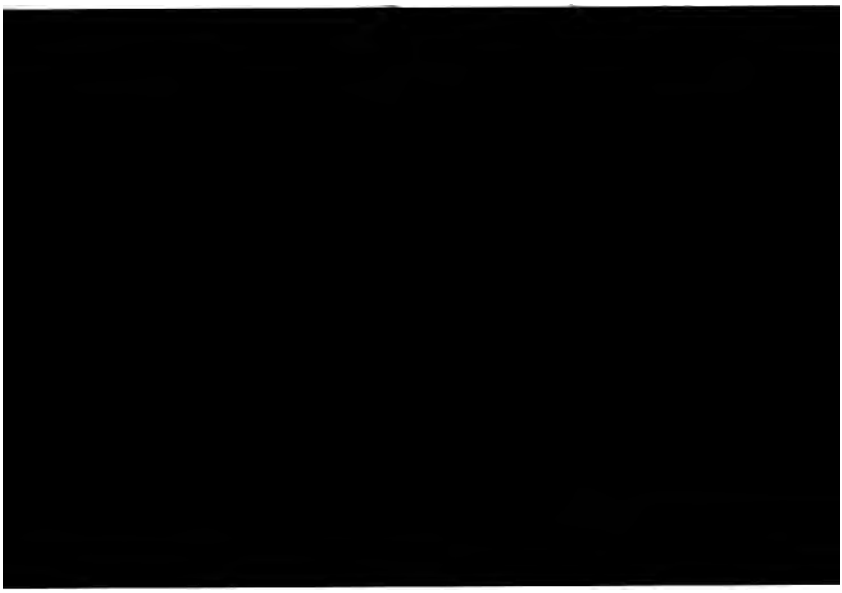
Mr. North. Pray give an account of what you know of the plot in general.

Mr. West. My lord, in October last, captain Walcot came to me, and told me that my lord Shaftesbury had designed an insurrection in November. I used some arguments to dissuade him from it. But a little afterwards he came and told me the thing was wholly disappointed; and then it went off, and my lord Shaftesbury went for Holland. Colonel Rumsey afterwards, about Christmas, said there were some lords and gentlemen intended to make an insurrection: the persons were the duke of Monmouth, my lord of Essex, my lord Howard, my lord Russel, the prisoner at the bar, and Mr. Hambden, junior. After some time he told me they had altered their measures, and were resolved not to venture upon an insurrection in England, till they had a concurrency in Scotland. Afterwards, I was not privy to any thing else, but what I had the report of from Mr. Nelthorp and Mr. Ferguson. Mr. Nelthorp told me the prisoner had said.....

Col. Sydney. My lord, I am very unwilling to interrupt the gentleman....

[redacted] interrupt the witness.

[redacted] me, the prisoner [redacted] from me Scotland, and [redacted] his charges, [redacted] Scotch gentlemen to invite [redacted] of settling [redacted] the business was [redacted]. After this Mr. [redacted] Scotch gentlemen with [redacted] account [redacted] proposed, if they [redacted] ready money, [redacted] insurrection in [redacted] of England. He [redacted] and money would [redacted] Sheppard would re- [redacted] ready bought, [redacted] Scotland, and [redacted] things were thus



My lord, this was the account I had of the matter in general, of Mr. Ferguson; but he said they were disappointed. Afterwards he told me, the prisoner at the bar and Major Wildman were very instrumental in working of it off, because they could not agree upon the declaration to be made upon the insurrection. The English were for a commonwealth; but the Scotch gentlemen answered fairly, it might come to it in time, but the noblemen there would not agree to it at present. As to the prisoner in particular, I know nothing, and did never speak with him till since the discovery.

Mr. Att. Gen. Colonel Rumsey. [*Sworn.*]

Mr. North. Pray, sir, will you give the court an account of what you know of any insurrection intended, and how they designed to carry it on?

Col. Rumsey. My lord, the latter end of October, or beginning of November, I was desired by my lord Shaftesbury to go to Mr. Sheppard's, to know of the gentlemen that were met there, what was done about the rising intended at Taunton: and I had their answer, that Mr. Trenchard had failed them, and that it must cease for that time. That was all at that time.

Mr. Sol. Gen. What else do you know of any insurrection afterwards?

Col. Rumsey. After that, we had several meetings at Mr. West's chamber, where we had divided the

city into twenty parts, and seven parts Mr. Goodenough had brought an account of; the other thirteen he had said nothing of; for he had not spoke with those that were to tell him how many men they would afford. There was there captain Walcot, Mr. West, the two Goodenoughs, Mr. Borne, Mr. Wade, and myself.

L. C. J. What was the result of those debates?

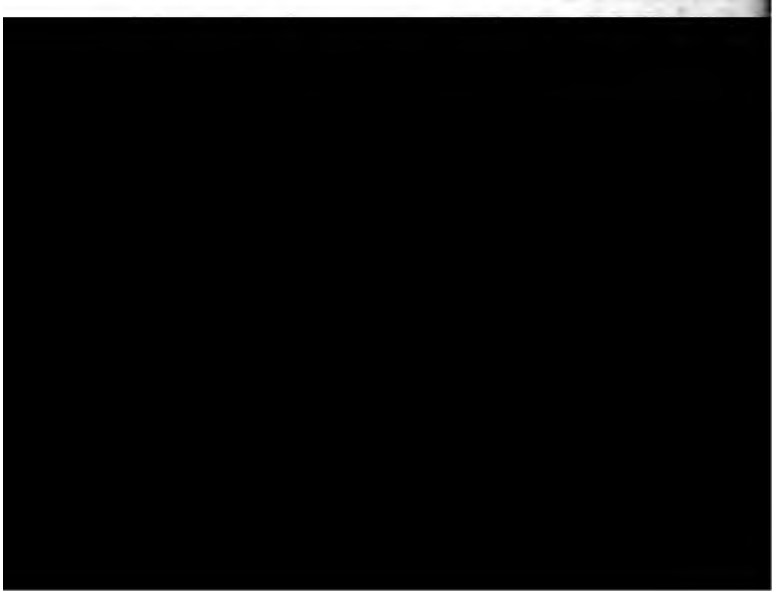
Col. Rumsey. To see what number of men they could produce in the city for the insurrection.

L. C. J. Was there a rising designed?

Col. Rumsey. Yes.

L. C. J. And did these people meet?

Col. Rumsey. There was no time set.



L. C. J. Who did you meet with at Mr. Sheppard's?

Col. Rumsey. There was the duke of Monmouth, my lord Grey, my lord Russel, Sir Thomas Armstrong, Mr. Ferguson, and Mr. Sheppard.

Mr. Sol. Gen. Who did you expect should head this army?

Col. Rumsey. That was never said any thing of.

Mr. Att. Gen. Who were to manage the rising?

Col. Rumsey. We that met there.

Mr. Att. Gen. Had you no expectation of great men?

Col. Rumsey. * Mr. West told me, and Mr. Goodenough, that there was a council, which were the duke of Monmouth, my lord Essex, my lord

* The witnesses of the other parts of the plot were now brought out again to make a shew; for they knew nothing of Sydney. Only they said, that they had heard of a council of six, and that he was one of them. Yet even in that they contradicted one another; Rumsey swearing that he had it from West, and West swearing that he had it from him; which was not observed till the trial came out. If it had been observed sooner, perhaps Jeffreys would have ordered it to be struck out; as he did all that Sydney had objected upon the point of the jury, because they were not freeholders.

Burnet's Hist. of his own Times, v. i. p. 571.

Howard, Colonel Sydney, Mr. Hambden, and my lord Russel: there were six.

L. C. J. What did he tell you of them six?

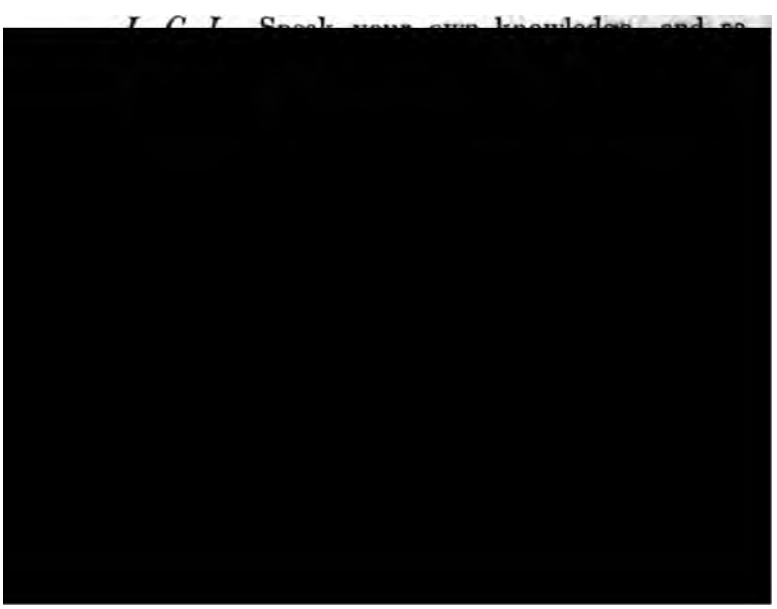
Col. Rumsey. He told me they were managing a business with Scotland.

L. C. J. A business? pray speak plain, tell all you know.

Col Rumsey. For the insurrection.

L. C. J. Say so then; we know nothing of the business you were about.

Col. Rumsey. My lord, Mr. West had that discourse with my lord Howard, I never had; he is more fit to speak to that, than me.



Col. Rumsey. Yes, because we met towards the management of it, the company that met at Mr. West's chamber, and other places.

Mr. Att. Gen. What discourse had you with Mr. Ferguson about it?

Col. Rumsey. None about those gentlemen.

Mr. North. The next thing we shall shew shall be, that the Scotchmen came to town.

Col. Sydney. My lord, I must ever put you in mind, whether it be ordinary to examine men upon indictments of treason concerning me that I never saw, nor heard of in my life.

L. C. J. I tell you, all this evidence does not affect you, and I tell the jury so.

Col. Sydney. But it prepossesses the jury. [*Mr. Keiling called and sworn.*]

Mr. Att. Gen. I ask you in general, what you know of the rising to have been last spring?

Mr. Keiling. My lord, it was some time last summer Mr. Goodenough came to me, and brought me three papers numbered on the back side. I asked him to what end he delivered them me? He told me, one was for myself, and I was to deliver the other two to whom I could trust in the two divisions. I

asked him what was the design? he said, To raise men: says I, Do you design a general insurrection? he said, If he did not, if the king was taken off, this would do well; for then people would know how to have recourse to a formidable body. And I have heard him say, that Colonel Sydney, whom I don't know, had a considerable part in the management of that affair.

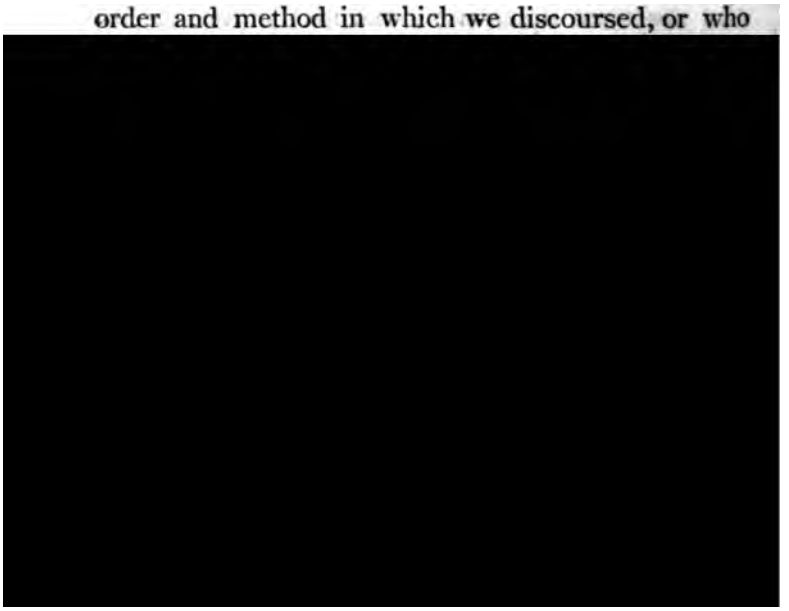
Mr. Att. Gen. We charge him with conspiring, and there must be confederates in the case. Now then we come to the prisoner, we will call my lord Howard, that was one of the persons that did consult. [*The lord Howard sworn.*]

Mr. Att. Gen. Pray acquaint my lord and the jury of your knowledge of what transactions there have been with the prisoner about this affair of the general rising.

Lord Howard. Truly, my lord, in the entering

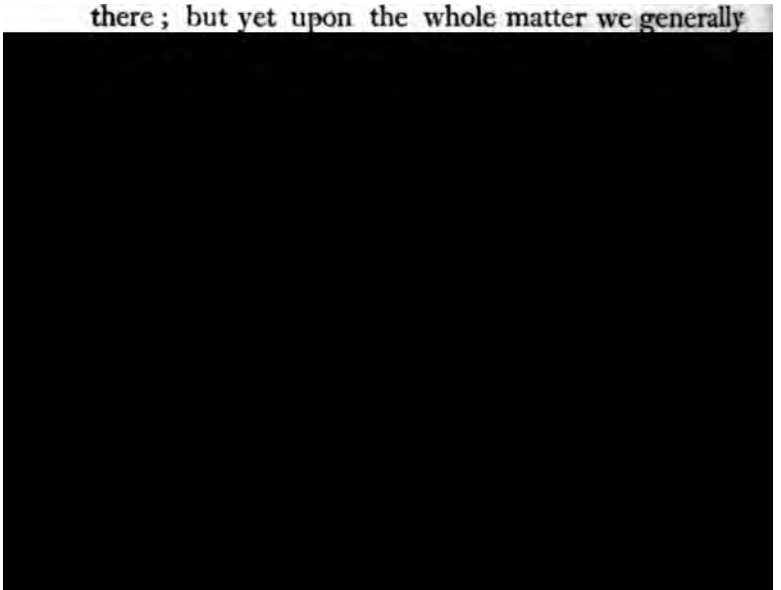
expedient to an enterprise that had been long in hand, and fallen flat then, that it should be revived by some consult or cabal, that should be set up to give life to it, and governance to the motions of it. The first (for aught I know) movers of this, were the duke of Monmouth, the gentleman at the bar, and myself: and there we did agree, that we should bethink ourselves of some few; we were willing it should not exceed five, at the most seven. This agreement being at first between us three; I remember the duke of Monmouth undertook to engage my lord Russel and my lord Salisbury; and this gentleman, Colonel Sydney, for my lord of Essex and Mr. Hambden; and these being put together, did presently constitute a little cabal of as great a number as was intended. This being settled among them, it was within a few days after, I can't certainly tell when, but between the middle and latter end of January, that I was told, that the persons had agreed to enter into this conjunction of counsels; and, in order to that, they had appointed a meeting at Mr. Hambden's house, to which I was invited. This in time was between the middle and latter end of January, but I can't tell exactly. When we came there, there was all those gentlemen I before named, the duke of Monmouth, my lord Essex, my lord Russel, Colonel Sydney, Mr. Hambden, and myself. It was at Mr. Hambden's house, which ranges on the same row with Southampton-house: and being met, Mr. Hambden, I suppose, did think it most properly belonged to him to take upon him the part, as it were, to open the sessions; that was, to give us a little account of

the reason, end, and intention of that meeting: in which discourse, he took occasion to recapitulate some design, that had been before chiefly carried on by my lord Shaftesbury, before this time dead; and also took notice of the ready diposition and inclination of the minds of men to go on with it; and did give one instance of his judgment of it, that it being a design communicated to so many, it had not been so much as revealed, or a murmur or whisper gone about it: from whence he took occasion to tell us, that it was absolutely necessary for the future there should be some council, that should be as a spring a little to guide and govern the motions of the rest; for that there were divers things to be taken care of, which, if not taken care of by particular persons, would all miscarry. This was the substance of the prologue and introduction he made. From hence he made a transition to some particular things that he thought were most principally to be taken care of. And though it is impossible for me to remember the order and method in which we discoursed, or who



given, but not settled to any resolution, but they were committed to our thoughts to be digested afterwards. But these being the things that every one was to take upon his thoughts, there was this prerequisite to the undertaking, and that was, to consider what magazines were to be got: and that led to another particular, which was, with what they should be gotten, and that was money; and thereupon was propounded a considerable sum to be raised; and, as I remember, the sum propounded by the duke of Monmouth was twenty-five thousand pounds, or thirty thousand pounds. And then it was considered, how it should be raised without drawing observation or jealousy. These are only the heads that were then agreed on, hereafter to be better considered. But the present resolution that was taken, was, that before any procedure was made in any of these things, or any advance towards the undertaking, the first thing to be considered was, how to make a coalition of counsels between Scotland and what we were doing here; and for that purpose we should bethink ourselves of some fit person to be sent thither to unite us into one sense and care. This is as much as occurs to my memory upon that meeting. About a fortnight or three weeks, which I suppose carried it to the middle of February next, we had another meeting, and that was at Southampton-house, at my lord Russel's, and there was every one of the same persons; and when we came there, there happened to fall in a discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely and unseasonable; and that

I remember was by Mr. Hambden, who did tell us, that having now united ourselves into such an undertaking as this was, it could not but be expected that it would be a question put to many of us, To what end all this was? Where it was we intended to terminate? Into what we intended to resolve? that these were questions he met with; and, it was probable, every one had or would meet with, from those persons whose assistance we expected; and that if there was any thing of a personal interest designed or intended, that there were but very few of those, whose hearts were now with us, but would fall off: and therefore, since we were upon such an undertaking, we should resolve ourselves into such principles, as should put the properties and liberties of the people into such hands, as they should not be easily invaded by any that were trusted with the supreme authority of the land: and it was mentioned, to resolve all into the authority of the Parliament. This was moved by him, and had a little harshness to some that were there; but yet upon the whole matter we generally



am sure it was some of the alliance of my lord of Argyll, and I think of the name. As soon as this was propounded, it was offered by this gentleman, Colonel Sydney, that he would take the care of the person; and he had a person in his thoughts, that he thought a very fit man to be intrusted; one or two, but one in special, and he named Aaron Smith to be the man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper person. This is all that occurs to me that was at the second meeting, and they were the only consults that I was at.

Mr. Att. Gen. What was he to do?

Lord Howard. There was no particular deed for him, more than to carry a letter. The duke of Monmouth undertook to bring my lord Melvin hither, because he had particular dependance upon him, and I think some relation to his lady: but to Sir John Cockram there was a letter to be sent under the disguise of carrying on some business of the plantation in Carolina. This letter, I suppose, was writ by my lord Russel (though I know it not) for he was personally known to my lord Russel, and I don't know that he was known to any of us. About three weeks after this then, he was dispatched, I suppose.

Mr. Att. Gen. To what purpose were these gentlemen to come up?

Lord Howard. These were to acquaint us how they found Scotland tempered, and what opportunities or advantages there were or might be of putting them into a commotion, and how men might be raised, and how they would fall under Argyll, and also to keep time and place with us. After this, I was with Colonel Sydney when he was going to London, and he did take out several guineas, I can't tell how much it was. I suppose they might be about sixty, and put them into his pocket (and set me down at his lodging) which he said were to give Aaron Smith; whether he gave it or no, I don't know; and after that he was sent.

Mr. Att. Gen. Who told you so?

Lord Howard. Colonel Sydney, for I was inquiring of him: and he said, he had not heard of him in three weeks, or but once, when he was about Newcastle. After this, I had occasions that called me into the country, and there I was. Some time

after he was gone, that he went in pursuance of that debate?

Lord Howard. Yes, my lord, that was the whole end of his going.

Mr. Just. Wythins. I think you say, that gentleman (speaking of Col. Sydney) undertook to send him?

Lord Howard. Yes, he did.

L. C. J. Will you ask him any questions?

Col. Sydney. I have no questions to ask him.

Mr. Att. Gen. Silence....You know the proverb. The next step is to shew you, my lord, that these persons came up immediately after Aaron Smith went down thither; and, according to that which was said to be the shadow and pretence of their coming hither, they pretended they came about Carolina business. Sir Andrew Foster and Mr. Blathwaite. [*Sir Andrew Foster sworn.*]

Mr. Att. Gen. Pray, sir, give an account what Scotch gentlemen came up lately.

Sir A. Foster. My lord, about the end of the spring, or beginning of summer, as I remember, these gentlemen, Sir John Cockram, and commissary Monro, and the two Campbells, father and son, came

up hither. I did not see the father at all, but I saw the son the day of the lord Russel's trial; but the other two I think I saw a little before the discovery of the plot.

Mr. Att. Gen. What did they pretend they came about?

Sir A. Foster. They pretended they came to make a purchase in Carolina, and I saw their commission from the persons said to be concerned in that design.

L. C. J. Who do you speak of?

Sir A. Foster. Sir John Cockram and commissary Monro.

Mr. Att. Gen. As soon as the rumour came of the plot, what became of those gentlemen?

[redacted]

was; I was sent for into London upon a discovery of some Scotch gentlemen that lay about Black-Friars; and when I came down there, there was the common sergeant, and some others, had been before me, and found them making an escape into a boat.

Mr. Att. Gen. Who were they?

Mr. Atterbury. Sir Hugh Campbell, and Sir John Cockram, and one that was committed to the Gate-house by the council, as soon as brought thither.

Mr. Att. Gen. We shall end here, my lord. How long had they been in town?

Mr. Atterbury. They had been in town some little time.

Mr. Att. Gen. We have done with this piece of our evidence. Now to shew that while this emissary was in Scotland, at the same time the Colonel (which will be another overt act of the treason) was writing a treasonable pamphlet, I will call you the witnesses. It is all of his own writing. [*Sir Philip Lloyd sworn.*]

Mr. Att. Gen. Sir Philip Lloyd, pray will you look upon those papers, and give my lord and the jury an account where you found them?

Sir Philip Lloyd. I had a warrant, my lord, from the secretary by the king and council, to seize Mr.

Algernon Sydney's papers; and, pursuant to it, I did go to his house, and such as I found there I put up. I found a great many upon the table, amongst which were these: I suppose it is where he usually writes. I put them in a pillow-bier I borrowed in the house, and that in a trunk. I desired Colonel Sydney would put his seal upon them, that there should be no mistake. He refused: so I took my seal and sealed up the trunk, and it was carried before me to Mr. Secretary Jenkins' office. When the committee sat, I was commanded to undo the trunk, and I did so, and found my own seal upon it. And I took the papers out of the bag I put them into before.

L. C. J. Was Colonel Sydney present when you seized these papers?

Sir P. Lloyd. Yes.

Mr. Att. Gen. Are these some of those papers?

Jury-Man. Which June?

Sir P. Lloyd. Last June. [*Mr. Sheppard sworn.*]

Mr. Att. Gen. Pray will you look upon those writings? [*Shewing the libel.*] Are you acquainted with Colonel Sydney's hand?

Mr. Sheppard. Yes, my lord.

Mr. Att. Gen. Is that his hand-writing?

Mr. Sheppard. Yes, sir, I believe so. I believe all these sheets to be his hand.

Mr. Att. Gen. How come you to be acquainted with his hand?

Mr. Sheppard. I have seen him write the indorsement upon several bills of exchange. [*Mr. Cary sworn.*]

Col. Sydney. My lord, I desire you would please to consider this, that similitude of hands can be no evidence.

L. C. J. Reserve yourself till anon, and make all the advantageous remarks you can.

Mr. Att. Gen. Have you had any dealing with him?

Mr. Cary. I never saw him write to my knowledge more than once in my life, but I have seen his indorsement upon bills, and 'tis very like that.

L. C. J. Do you believe it is his hand, as far as you can guess?

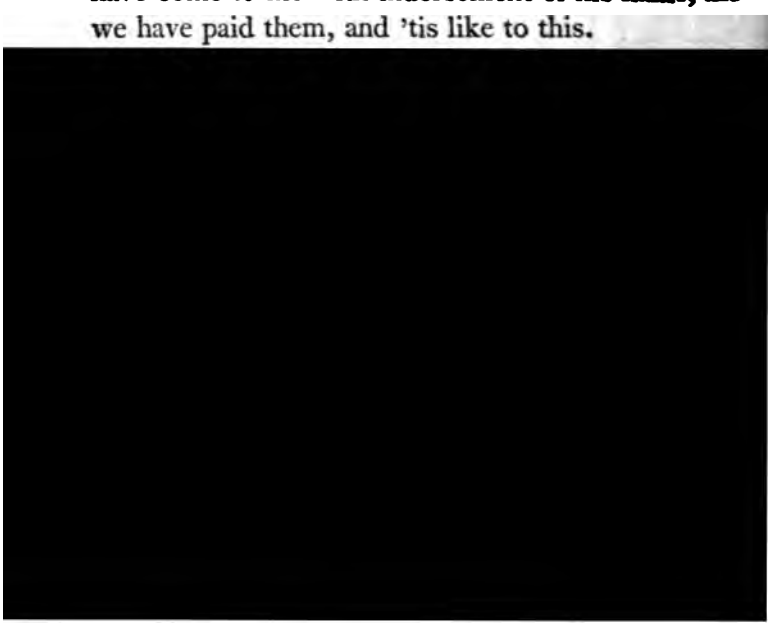
Mr. Cary. My lord, it is like what came to me for his hand-writing.

L. C. J. And you believe it to be his hand?

Mr. Cary. Yes. [*Mr. Cooke sworn, and the papers shewn him.*]

L. C. J. What say you, Mr. Cooke?

Mr. Cooke. My lord, I did never see Colonel Sydney write, but I have seen several notes that have come to me with indorsement of his name, and we have paid them, and 'tis like to this.



L. C. J. Mr. Attorney must have what part he desires read, and you shall have what part you will have read afterwards.

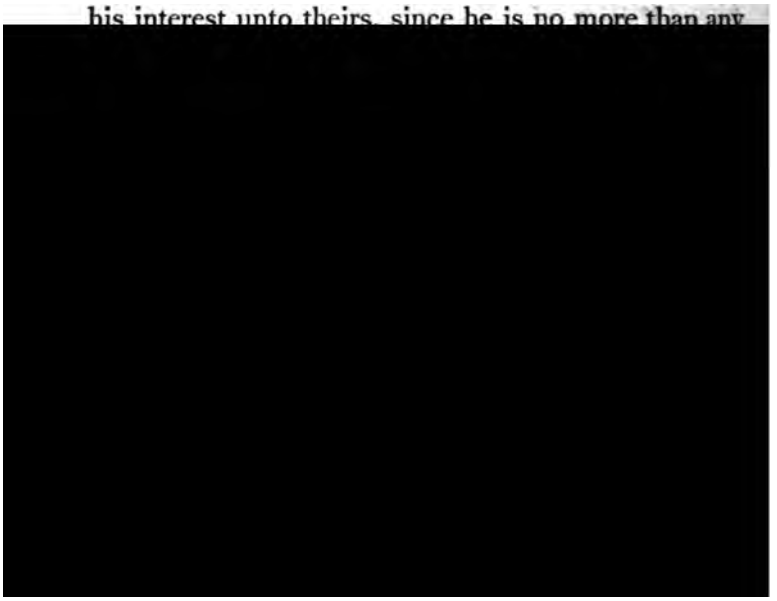
Col. Sydney. I desire all may be read.

Mr. Att. Gen. Begin there...."Secondly, There was no absurdity in this, because it was their own case."....

Clerk reads...." 2dly, There was no absurdity in this, though it was their own case, but to the contrary, because it was their own case; that is, concerning themselves only, and they had no superior. They only were the competent judges; they decided their controversies, as every man in his own family doth such as arise between him and his children, and his servants. This power hath no other restriction than what is put upon it by the municipal law of the country where any man lives; and that hath no other force than as he is understood to have consented unto it. Thus in England every man, in a degree, hath a right of chastising them; and in many places, even by the law of God, the master hath a power of life and death over his servant. It were a most absurd folly to say that a man might not put away, or in some cases kill, an adulterous wife, a disobedient son, or an unfaithful servant, because he is party and judge; for the case doth admit of no other, unless he had abridged his own right by entering into a society where other rules are agreed upon, and a superior judge constituted: there being none such between

king and people, the people must needs be the judge of things happening between them and him, whom they did not constitute that he might be great, glorious, and rich; but that he might judge them, and fight their battles; or otherwise do good unto them as they should direct. In this sense, he that is *singulis major*, and ought to be obeyed by every man in his just and lawful commands tending to the public good, must be suffered to do nothing against it, nor in any respect more than the law doth allow.

"For this reason Bracton saith, that 'the king hath three superiors, to wit, *Deum*, *Legem*, *et Parliament*;' that is, the power originally in the people of England, is delegated unto the Parliament. He is subject unto the law of God, as he is a man; to the people that makes him a king, inasmuch as he is a king: the law sets a measure unto that subjection, and the Parliament judges of the particular cases thereupon arising: he must be content to submit his interest unto theirs, since he is no more than any



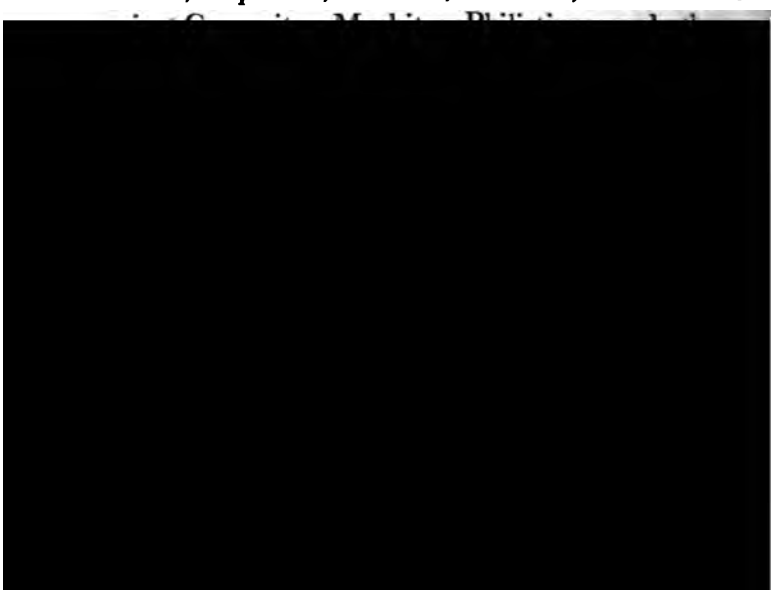
how one or more men can come to be guilty of treason against the king, as *lex facit ut sit rex*. No man can owe more unto him than unto any other, or he unto every other man, by any rule but the law; and if he must not be judge in his own case, neither he, nor any other by power received from him, would ever try any man for an offence against him, or the law.

"If the king, or such as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongst us. If he, or other by authority from him, may judge, he is judge in his own case, and we fall under that which he accounts the utmost of all absurdities; if a remedy be found for this, he must say that the king in his own case may judge the people, but the people must not judge the king, because it is theirs: that is to say, The servants entertained by the master may judge him, but the master must not judge the servant whom he took only for his own use; the magistrate is bound by no oath or contract to the people that created him, but the people is bound to its own creature, the magistrate.

"This seems to be the ground of all our author's follies: he cannot comprehend that magistrates are for or by the people; but makes this conclusion, as if nations were created by or for the glory or pleasure of magistrates: and, after such a piece of nonsense, it ought not to be thought strange, if he represent, as an absurd thing, that the headless multitude may

shake off the yoke when they please. But I would know how the multitude comes under the yoke; it is a badge of slavery. He says that the power of kings is for the preservation of liberty and property. We may therefore change or take away kings without breaking any yoke, or that is made a yoke which ought not to be one; the injury is therefore in making or imposing, and there can be none in breaking it.

"That if there be not an injury, there may perhaps be an inconvenience, if the headless multitude may shake off the yoke. I know not why the multitude should be concluded to be headless; it is not always so. Moses was head of the multitude that went out of Egypt. Othniel led them against the king of Mesopotamia. Under the conduct of Phinehas they obtained a victory against the Midianites: they had the like success under Shamgar, Barak, Gideon, Jephthah, Samuel, Samson, and others,



we know of none that were, but all either found heads, or made them. The Germans set up Arminius; the Britons, and others; in latter times, the Castilians, that rose against Peter the Cruel, had the lord de Trastamare.

"The French, when they grew weary of the corrupted races of Pharamond and Pepin, had the same Pepin and Hugh Capet: the Scots, when they slew James the Third, had his son to be their head: and when they deposed and imprisoned Queen Mary, the Earl of Murray and others supplied the want of age that was in her son: and in all the revolutions we have had in England, the people have been headed by the Parliament, or the nobility and gentry that composed it; and, when the kings failed of their duty, by their own authority called it. The multitude therefore is not ever headless, but doth ever find or create heads unto itself, as occasion doth require; and whether it be one man, or a few, or more, for a short or a longer time, we see nothing more regular than its motions. But they may, saith our author, shake off the yoke. And why may they not, if it prove uneasy or hurtful unto them? Why should not the Israelites shake off the yoke of Pharaoh, Jabin, Sisera, and others that oppressed them?

"When pride had changed Nebuchadnezzar into a beast, what should persuade the Assyrians not to drive him out among beasts, until God had restored unto him the heart of a man? When Tarquin had turned the legal monarchy of Rome into a most

abominable tyranny, why should they not abolish it? And when the Protestants of the Low Countries were so grievously oppressed by the power of Spain, under the proud, cruel, and savage conduct of the duke of Alva, why should they not make use of all the means that God had put into their hands for their deliverance? Let any man who sees the present state of the provinces that then united themselves, judge whether it is better for them to be as they are, or in the condition unto which his fury would have reduced them, unless they had, to please him, renounced God and their religion. Our author may say, they ought to have suffered; the king of Spain, by their resistance, lost those countries; and that they ought not to have been judges in their own case. To which I answer, That by resisting they laid the foundation of many churches that have produced multitudes of men eminent in gifts and graces; and established a most glorious and happy commonwealth, that hath been, since its first beginning, the strongest pillar of the Protestant cause now in the world, and a place of refuge unto those who in all parts of Europe have been oppressed for the name of Christ: whereas they had slavishly, and, I may say, wickedly as well as foolishly, suffered themselves to be butchered, if they had left those empty provinces under the power of Antichrist, where the name of God is no otherwise known, than to be blasphemed.

"If the king of Spain desired to keep his subjects, he should have governed them with more justice and mercy. When, contrary unto all laws, both human

and divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his tyranny: and when the matter is brought to that, that he must not reign, or they over whom he would reign must perish, the matter is easily decided: as if the question had been asked in the time of Nero and Domitian, Whether they should be left at liberty to destroy the best part of the world, as they endeavoured to do, or it should be rescued by their destruction? And as for the people's being judges in their own case, it is plain, they ought to be the only judges, because it is their own, and only concerns themselves."

Mr. Att. Gen. The latter end, the last sheet of all, § 35.

L. C. J. The argument runs through the book, fixing the power in the people.

Clerk of the Crown. "The general revolt of a nation from its own magistrates, can never be called rebellion."

Mr. Att. Gen. § 37.

Clerk of the Crown. "The power of calling and dissolving Parliaments is not in the king."

Mr. Att. Gen. So much we shall make use of; if the Colonel please to have any other part read, to explain it, he may. [*Then the sheets were shewn to Colonel Sydney.*]

Col. Sydney. I do not know what to make of it, I can read it.

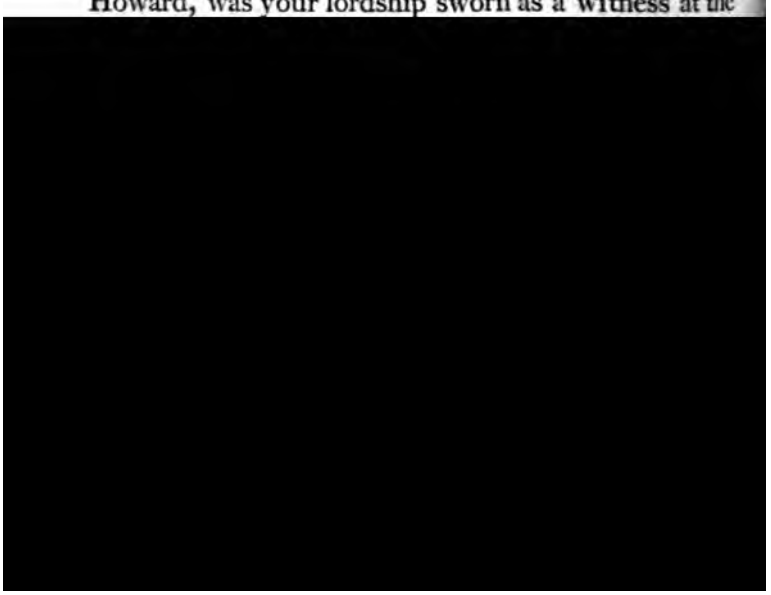
L. C. J. Ay, no doubt of it, better than any man here. Fix on any part you have a mind to have read.

Col. Sydney. I do not know what to say to it, to read it in pieces thus.

L. C. J. I perceive you have disposed them under certain heads: to what heads will you have read?

Col. Sydney. My lord, let him give an account of it that did it.

Mr. Att. Gen. My lord, we will not delay Colonel Sydney from entering on his defence; only we have this piece of evidence to give further. One of his complices was my lord Russel; we will give in evidence his conviction. We will only ask, my lord Howard, was your lordship sworn as a witness at the



Lord Howard. If you mean upon the misgovernment, not personally upon the king?

Mr. Att. Gen. Ay.

Lord Howard. Yes, and principally and chiefly that, which we thought was the general disgust of the nation, the imposing upon the city at that time.

Mr. Just. Wythins. That was complained of at that time?

Lord Howard. Yes, my lord: we took it all along to be the chief grievance.

L. C. J. Have you any more witnesses?

Mr. Att. Gen. Only the record.

Mr. Sol. Gen. I know there is no time mispent to make things clear. If the jury have a mind to have the words read again.....

L. C. J. If they have a mind, let it. [*Then Mr. Trinder was sworn, and testified it to be a true copy of the record, and said he examined it at Fishmonger's-Hall with Mr. Tanner. Then the record of the conviction of the lord Russel was read.*]

L. C. J. What will you go to next, Mr. Attorney?

Mr. Sol. Gen. We have done, unless the jury desire to have the words of the libel read again. [*But they did not.*]

Col. Sydney. My lord, I desire to know upon what statute I am indicted.

Mr. Att. Gen. My lord, I will give as plain an answer; you are indicted upon the old statute of 25 E. 3.

Col. Sydney. Then I desire to know upon what branch of that statute.

Mr. Att. Gen. Why, I will acquaint you: 'tis upon the first branch of that statute, for conspiring and compassing the death of the king.

Col. Sydney. Then I conceive, what does not come within that does not touch me.

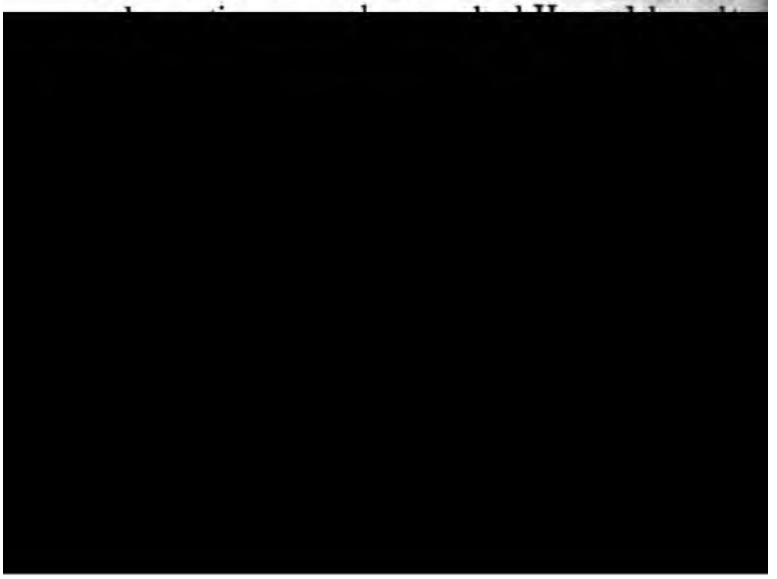
son to conspire the death of the king; and the overt act is sufficiently set forth in the indictment; now the question is, whether 'tis proved?

Col. Sydney. They have proved a paper found in my study, of Caligula and Nero; that is compassing the death of the king, is it?

L. C. J. That I shall tell the jury. The point in law you are to take from the court, gentlemen: whether there be fact sufficient, that is your duty to consider.

Col. Sydney. I say, my lord, that since I am indicted upon that statute, I am not to take notice of any other. I am indicted for conspiring the death of the king, because such a paper is found in my house. Under favour, I think that can be nothing at all to me; for though Sir Philip Lloyd did ask me, whether I would put my seal to it, he did not ask me till he had been in my closet, and I knew not what he had put in; and so I told him I would not do it. Then come these gentlemen upon similitude of hands. My lord, we know what similitude of hands is in this age. One told me within these two days, that one came to him, and offered him to counterfeit any hand he should shew him in half an hour. So then, my lord, I have nothing to say to these papers. Then for point of witness, I cannot be indicted, much less tried or condemned, on 25 E. 3. for by that act there must be two witnesses to that very branch unto which the treason does relate,

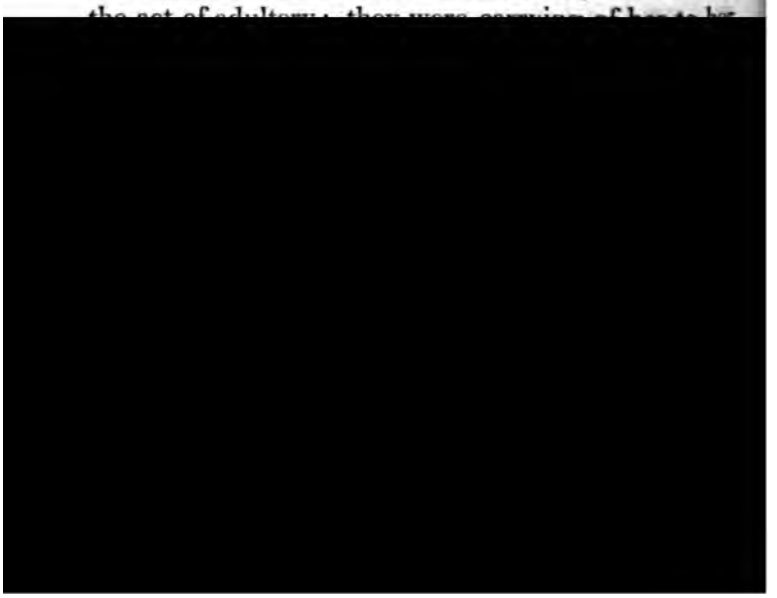
which must be distinguished. For the levying of war, and conspiring the death of the king, are two distinct things; distinct in nature and reason, and so distinguished in the statute. And therefore the conspiring the death of the king is treason, and the other not. 1 E. 6. 12. 5 E. 6. 11. does expressly say, there must be two witnesses to either of these acts. Now here is my lord Howard (I have enough to say of him by and by) 'tis he only who speaks of six men, whom he calls a select council, and yet selected by no man in the world. I desire to know who selected my lord Howard? Who selected me? If they were selected by no body, 'tis a bull to say they were a select council. If they were not selected, but erected themselves into a cabal, then they have either confidence in one another, or find they are nearly equally able to assist in the design. Here is nothing of all this: these six men were strangers to one another. For my own part, I never spake with the duke of Monmouth above three times in my life,



mouth said he was mad, and he himself said so too. Now that they should join with four more in the prosecution of the design of a madman, they must be mad too. Now whether my lord Howard would have you think he was mad, because a madman cannot be guilty of treason, I cannot tell. My lord Howard, in his last deposition at my lord Russel's trial, fixes the two meetings, one about the middle of January, the other ten days after; now he fixes one to be the latter end of January, the other the middle of February. Then he makes it to be the prosecution of my lord Shaftesbury's design. I do not find that any one there had any thing to do with my lord Shaftesbury: for my part I had not; I had not seen his face in two years. Then, my lord, that I go upon is, whatever my lord Howard is, here is but one witness. The law of God and the law of man, understood and taken by all men, does require two witnesses *: Moses says so; so the apostles

* "*Mr. Pelham.* I did presume yesterday to tell you, that Mr. Algernon Sydney did stand upon it as his natural right, that they could not proceed against him, there being but one witness. I did not bring his case as parallel to this, nor think that his authority should influence you. But he was a man that had that love for liberty and the good of his country, that he would not have said so, even to save his own life, if he had thought it inconsistent with either of them. But I have looked upon his trial since, and there he does declare, 'That the being condemned by two witnesses is the law of God and the law of man, the just law that is observed by all men, and in all places.' 'Tis certain he reached even by these words the power of Parliament: when I do say power, I do not mean, but that when such a law is passed, all are bound to obey it; but in some

the same after him; and Christ says the same, that *every matter is* to be *established by two witnesses.* There ought to be two witnesses to the same thing. Now for one to come and tell a tale of a tub, of an imaginary council; and another of a libel, a paper written nobody knows when, is such a thing, you can never go over it. But if the law of God be, that there must be two witnesses to the same fact, there is an end of this matter. And under the judicial law, the penalty would be in this case, to put a man to death. Now here there are but two things, which if allowed of, nobody will be safe for perjury. The one is, to suffer men to give their testimony, one to one thing, and another to another, that the fraud cannot be discovered; and the other is, to take away the punisment. Now the punishment is taken away in some measure; and do but take away the other point whereby the fraud cannot be discovered, and then there is no defence can be made. That both witnesses should be to the same point, see the story of Susanna. Two elders testified they saw her in



may say what he pleases, and if another shall come with a supplemental proof, no justice can be had. But, my lord, I desire this, if there be two witnesses to prove the conspiracy, and in that there were those matters done that are treason, I must answer to it; but if there be not, I presume, I need say nothing to it. If you do not allow it me, I desire counsel to argue it.

L. C. J. That is a point of fact, whether there be two witnesses? I tell you beforehand, one witness is not sufficient.

Col. Sydney. Why then there is my lord Howard, and never another.

L. C. J. Nay, do not make those inferences. I will tell the jury, if there be not two witnesses, as the law requires in this case, they ought to acquit you.

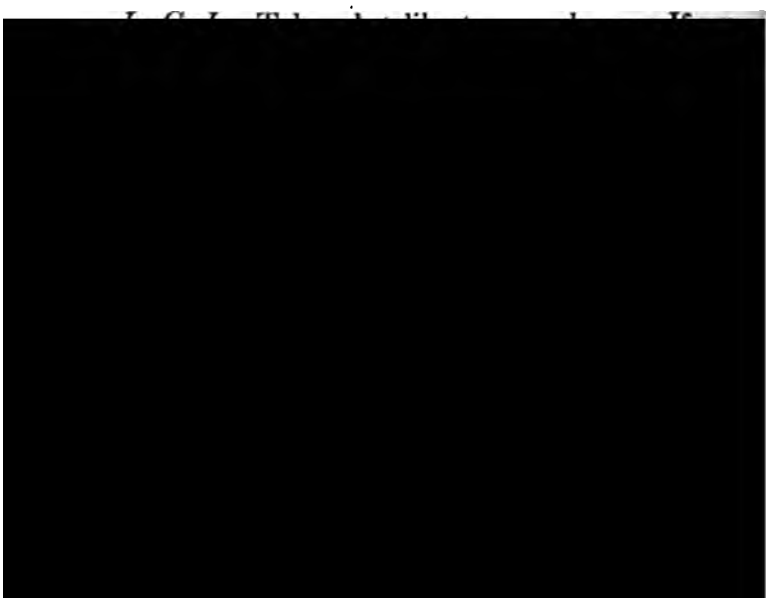
Col. Sydney. You confound me, I cannot stir. You talk of a conspiracy; what is a conspiracy to kill the king? Is there any more witnesses than one for levying of war?

L. C. J. Pray do not deceive yourself. You must not think the court and you intend to enter into a dialogue. Answer to the fact: if there be not sufficient fact, the jury will acquit you. Make what answer you can to it.

Col. Sydney. Then I say, there being but one witness, I am not to answer to it at all.

L. C. J. If you rely upon that, we will direct the jury presently.

Col. Sydney. Then for levying war, what does any one say? My lord Howard, let him, if he please, reconcile what he hath said now, with what he said at my lord Russel's trial. There he said, he said all he could; and now he has got I do not know how many things that were never spoken of there. I appeal to the court, whether he did then speak one word of that that he now says of Mr. Hambden. He sets forth his evidence very rhetorically, but it does not become a witness; for he is only to tell what is done and said: but he does not tell what was done and said. He says they took upon them to consider, but does not say what one man said, or one man resolved, much less what I did. My lord, if these things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.



Col. Sydney. I have a great deal to that.

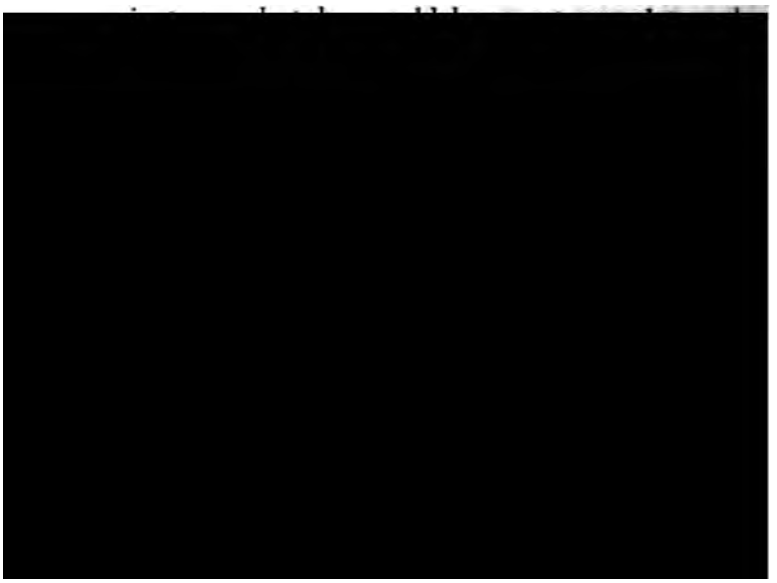
L. C. J. Go on to it then.

Col. Sydney. Then, my lord, was there a war levied? or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the statute: so this is nothing to me.

L. C. J. The court will have patience to hear you; but at the same time I think 'tis my duty to advertise you, that this is but mispending of your time. If you can answer the fact, or if you have any mind to put any disparagement upon the witnesses, that they are not persons to be believed, do it, but do not ask us questions this way or t'other.

Col. Sydney. I have this to say concerning my lord Howard: he hath accused himself of divers treasons, and I do not hear that he has his pardon of any: he is under the terror of those treasons, and the punishment for them: he hath shewn himself to be under that terror; he hath said, that he could not get his pardon until he had done some other jobs, till he was past this drudgery of swearing: that is, my lord, that he having incurred the penalty of high treason, he would get his own indemnity by destroying others. This, by the law of God and man, I think, destroys a man's testimony. Besides, my lord, he is my debtor; he owes me a considerable sum of money I lent him in time of his great necessity: he made some covenants with me for the pay-

ment of that money, which he hath broken; and when his mortgage was forfeited, and I should take the advantage the law gives me, he finds out a way to have me laid up in the Tower. He is a very subtle man. At my lord Russel's trial, he carried his knife, he said, between the paring and the apple; and so this is a point of great nicety and cunning, at one time to get his own pardon, and at the same time to save his money. Another thing, my lord, is, when I was prisoner, he comes to my house, and speaks with my servant, and says, how sorry he was that I should be brought in danger upon this account of the plot; and there he did, in the presence of God, with hands and eyes uplifted to heaven, swear, he did not believe any plot, and that it was but a sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before; I have several witnesses to prove both. He was desirous to go further; and he would not only pay my debt by his testimony



:ould. Now he did face it out bravely against
l, but he was very timorous of man. So that,
lord, he does say at the same time at my lord
sel's trial, upon his oath, that he did believe
the religious obligation of an oath did not con-
in the formality of applying it to the place, &c.
in calling God to witness. So that when he did
God to witness, before Dr. Burnet and my ser-
t, and others, this is not consistent with the oath
as taken here, as the gentleman said at my lord
sel's trial, unless he has one soul in court, and
another at my house: these things are inconsist-
and cannot be true; and if he swear both, under
religion of an oath, he swears himself perjured.
n, my lord, he talks of Aaron Smith: what have
) do with Aaron Smith? He says I sent him.
lord, there is nobody else speaks a word of it.
en, by a strange kind of construction and ima-
tion, they will have it, that some papers here,
ich are said to be found in my study, have rela-
to this plot, as they call it; I know of none, nor
in none. Now, my lord, I am not to give an ac-
nt of these papers; I do not think they are before
, for there is nothing but the similitude of hands
red for proof. There is the like case of my lady
r, some few years ago: she was indicted of per-
y, and, as evidence against her, some letters of
s were produced, that were contrary to what she
re in chancery, and her hand was proved; that is
ay, it was like it: but my lord chief justice Keil-
; directs the jury, that though in civil causes it is
roof, yet it is the smallest and least of proofs;

but in criminal cases it was none at all. So that my lord Howard's testimony is single; and what he talks of those two businesses, that he calls a consult, and Aaron Smith, is destroyed by want of proof. What could six men do? Can my lord Howard raise five men by his credit, by his purse? Let him say as much for me, with all my heart; for my part I do not know where to raise five men. That such men as we are, that have no followers, should undertake so vast a design, is very unlikely: and this great design that was carried on thus, it had neither officers nor soldiers, no place, no time, no money for it. That which he said last time, which he forgot now: he talked of twenty-five or thirty thousand pounds; but no man knew where it was to be had: but last time he said, it was spoken in jest. Now this is a pretty cabal, that six men should meet about a business, and they neglect every one of the points relating to the thing they met about, make no step about the business, and if any one did speak of it, it was

cers' presence, or those deputed by him, there was no use could be made of them; it was an irreparable fault in the process, and that saved him. The similitude of hands is nothing: we know that hands will be counterfeited, so that no man shall know his own hand. A gentleman that is now dead told me, that my lord Arlington, about five years ago, desired him to write a letter, and seal it as well as he could. He writ it with care, and sealed it with a wafer and wax upon it; and within a few days my lord Arlington brought him five letters, and he did not know which was his own. The attorney shews these papers to me; I do not know whether they are my own, or no; but these very papers, such as they are, do abhor as much as any one can, such a design. Look upon them; you see they are all old ink. These papers may be writ perhaps these twenty years, the ink is so old. But, my lord, it is a polemical discourse; it seems to be an answer to Filmer, which is not calculated for any particular government in the world; it goes only upon these general principles, that according to the universal law of God and nature there is but one government in the world, and that is intire and absolute; and that the king can be bound by no law, by no oath, but he may make all laws, and abolish them as he pleases: and this whether of age or no, a man, or a child, of sense, or out of his sense. Now, my lord, what if any man in his cabinet should have written this book? Then he has another principle; he says, 'tis the same thing whether a king come in by election, by donation, by inheritance, or usurpation, or any

other way; than which, I think, never was a thing more desperately said. Cromwell, when one White, a priest, wrote * a book, wherein he undertook to prove, 'that possession was the only right to power,' though he was a tyrant, and a violent one † (you

* The title of the book (a curious one too, the above notwithstanding) is, The Grounds of obedience and government. By Thomas White, gentleman. (A secular Romish priest.)

There are two editions of it. The second edition was printed, London, 1655, in 16to. The motto to the title is, *Salus populi suprema lex*. See many circumstances relating to this learned able writer, and his works, in A. Woods' Athenae Oxonienses, and bishop Kennet's Hist. Register.

† Milton had held out the beacon to him in his sonnet, "To the Lord General Cromwell," May 1651; before he destroyed the Parliament, and, by authority of the army, set up tyrant for himself.

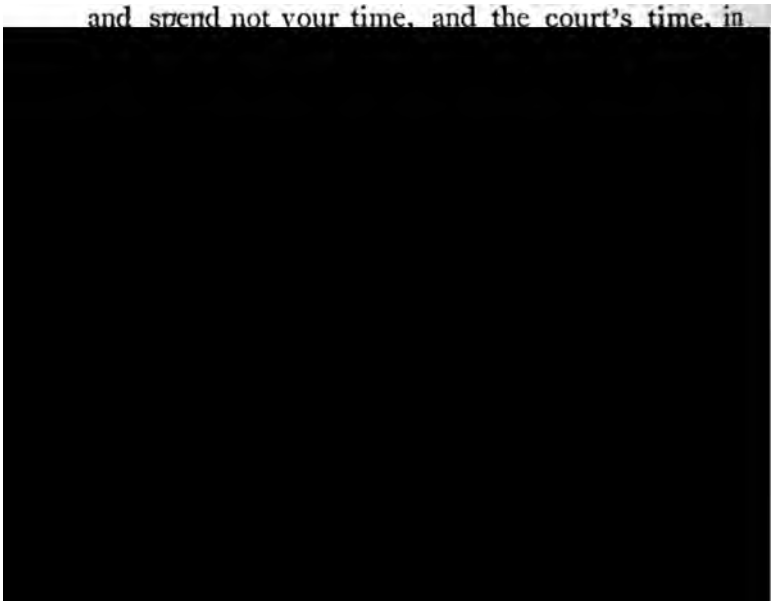
Cromwell, our chief of men, that through a croud,
Not of war only, but detractions rude,
Guided by faith, and matchless fortitude,
To peace and truth thy glorious way hast plough'd

need not wonder I call him tyrant, I did so every day in his life, and acted against him too) it would be so odious a principle, he could not endure it, and used him very slightly for it. Now this Filmer, that no

macte esto; te enim decet; tu patriae liberator, liberatis auctor, custosque idem et conservator, neque graviorem personam, neque augustiorem, suscipere potes aliam; qui non modò regum res gestas, sed Heroum quoque nostrorum fabules factis exuperasti. Cogita saepiùs quàm caram rem, ab quàm cara parente tua, libertatem à patriâ tibi commendatam atque concreditam, apud te depositam habes: quod ab electissimis gentis universae viris, illa modò expectabat, id nunc à te uno expectat, per te unum consequi sperat:—Reverere tantam de te expectationem, spem patriae de te unicam; reverere vultus et vulnera tot fortium viorum, quotquot, te duce, pro libertate, tam strenuè decertârunt; manes etiam eorum, qui in ipso certamine occubuerunt: reverere exterarum quoque civitatum existimationem de nobis atque sermones; quantas res de libertate nostra, tam fortiter partâ, de nostrâ, republicâ, tam gloriosè exortâ sibi polliceantur: quae si tam citò quasi aborta evanuerit, profectò nihil aequè dedecorosum huic genti, atque pudendum fuerit: teipsum denique reverere, ut pro quâ adipiscendâ libertate, tot aerumnas pertulisti, tot pericula adiisti, eam adeptus, violatem per te, aut ullâ in parte imminutam aliis, ne sinas esse. Profectò tu ipse liber sine nobis esse non potes; sic enim natura comparatum est, ut qui aliorum libertatem occupat, suam ipse primus omnium amittat; séque primum omnium intelligat servire: atque id quidem non injuriâ. At verò si patronus ipse libertatis, et quasi tutelaris deus, si is, quo nemo justior nemo sanctior est habitus, nemo vir melior, quam vindicavit ipse, eam postmodùm, invaserit, id non ipsi tantùm, sed universae virtutis ac pietatis rationi perniciosum ac lethale propemodum sit necesse est; ipsa honestas, ipsa virtus decoxisse videbitur, religionis augusta fides, existimatio perexigua in posterum erit, quo gravius generi humano vulnus, post illud primum, infligi nullum poterit."

one must write against, is the man that does assert it, 'that 'tis no matter how they come by their power;' and gives the same power to the worst usurpers, as they that most rightly come to the crown. By the same argument, if the arrantest rascal of Israel had killed Moses, David, &c. and seized upon the power, he had been possessed of that power, and been father of the people. If this be doctrine, my lord, that is just and good, then I confess it may be dangerous for any thing that may be found in a man's house contrary to it; but if a commoner of England write his present thoughts, and another man upon looking on his book, write his present thoughts of it, what great hurt is there in it? And I ask Mr. Attorney, how many years ago that was written?

L. C. J. I don't know what the book was in answer to. We are not to speak of any book that Sir Robert Filmer wrote; but you are to make your defence touching a book that was found in your study, and spend not your time, and the court's time, in



that which serves to no other purpose, than to gratify a luxuriant way of talking that you have. We have nothing to do with his book; you had as good tell me again, that there was a parcel of people rambling about, pretending to my lord Russel's ghost; and so we may answer all the comedies in England. Answer to the matter you are indicted for. Do you own that paper?

Col. Sydney. No, my lord.

L. C. J. Go on then. It does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your time to no purpose, and do yourself an injury.

Col. Sydney. I say, first, 'tis not proved upon me: and secondly, 'tis not a crime if it be proved....

L. C. J. You began very materially in one thing; it is material for you to apply yourself to take off the credibility of my lord Howard, that is a witness; call your witnesses to that purpose, or if you have any other point to take away the credibility of any other witness.

Col. Sydney. My lord, I have seven or eight points of law.

L. C. J. I hear not one yet.

Col. Sydney. Why, my lord, conspiring to levy

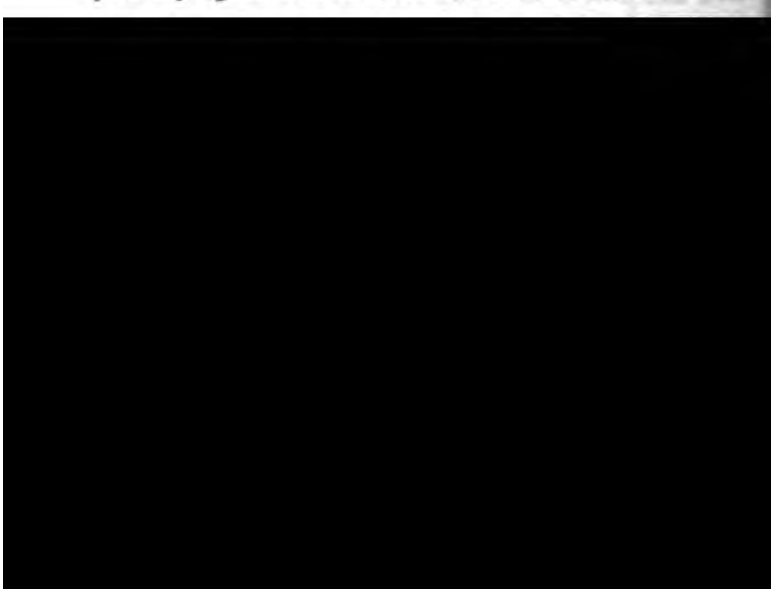
war is not treason, and I desire to have counsel upon that.

L. C. J. 'Tis not a question. You had as good ask me, whether the first chapter in Littleton be law?

Col. Sydney. My lord, I have neither made war, nor conspired to levy war.

L. C. J. You are still in a mistake: you shall not think that we intend to dialogue with you, to let you know how far the proof hath been given or not given; but when we come to direct the jury, then we shall observe how far the law requires there should be two witnesses. But whether there be such a proof, that must be left to the jury.

Mr. Just. Wythins. If you agree to the conspiracy, I will tell you my mind of it: I cannot give you my opinion in law, till the fact be stated.



any man that came before you. Now, my lord, if you will make a concatenation of one thing, a supposition upon supposition, I would take all this asunder, and shew, if none of these things are any thing in themselves, there can be nothing joined together.

L. C. J. Take your own method, Mr. Sydney; but I say, if you are a man of low spirits and weak body, 'tis a duty incumbent upon the court, to exhort you not to spend your time upon things that are not material.

Col. Sydney. My lord, I think 'tis very material that a whimsical imagination of a conspiracy should not pass for a real conspiracy of the death of the king; besides, if these papers were found in my house, 'tis a crime created since my imprisonment, and that cannot come in, for they were found since. My lord, if these papers are right, it mentions two hundred and odd sheets, and these shew neither beginning nor ending; and will you, my lord, indict a man for treason for scraps of paper, found in his house relating to an ancient paper, intended as innocently as any thing in the world, and piece and patch this to my lord Howard's discourse, to make this a contrivance to kill the king. Then, my lord, I think 'tis a right of mankind, and 'tis exercised by all studious men, that they write in their own closets what they please for their own memory, and no man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that right of mankind, that it is lawful for me to write what I will in my own closet, unless I publish it. I have been told, 'Curse not the king, not in thy thoughts, not in thy bed-chamber; the birds of the air will carry it.' I took it to be the duty of mankind, to observe that.

Col. Sydney. I have lived under the inquisition....

L. C. J. God be thanked, we are governed by law.

Col. Sydney. I have lived under the inquisition, and there is no man in Spain can be tried for heresy.

Mr. Just. Wythins. Draw no precedents from the inquisition, here, I beseech you, sir.

L. C. J. We must not endure men to talk, that by the right of nature every man may contrive mischief in his own chamber, and he is not to be pun-

true, in scripture, 'tis said, "There is no God," and you must not take that alone, but you must say, "The fool hath said in his heart, There is no God." Now here is a thing imputed to you in the libel; if you can say, there is any part that is in excuse of it, call for it. As for the purpose, whosoever does publish, that the king may be put in chains or deposed, is a traitor; but whosoever says, that none but traitors would put the king in chains or depose him, is an honest man; therefore apply *ad idem*, but don't let us make excursions.

Col. Sydney. If they will produce the whole, my lord, then I can say whether one part contradicts another.

L. C. J. Well, if you have any witnesses, call them.

Col. Sydney. The Earl of Anglesey.

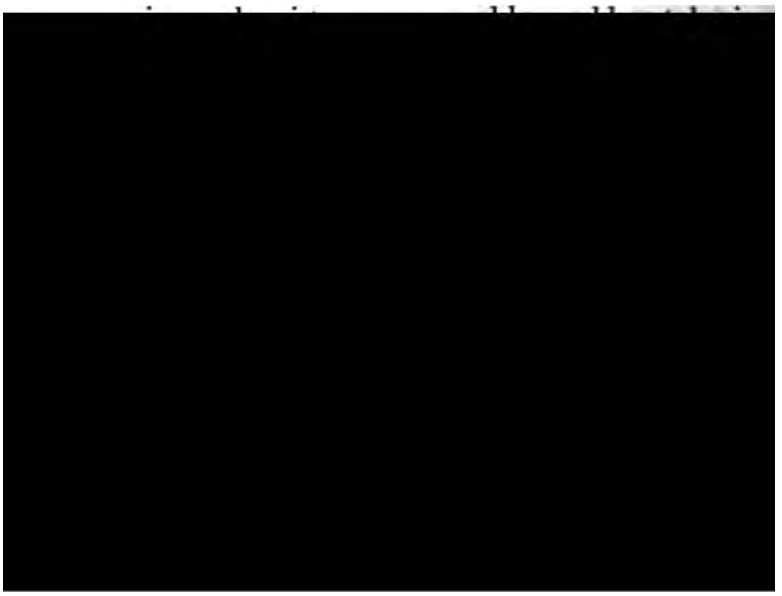
L. C. J. Ay, in God's name, stay till to-morrow in things that are pertinent.

Col. Sydney. I desire to know of my lord Anglesey, what my lord Howard said to him concerning the plot that was broken out.

Lord Anglesey. Concerning this plot you are now questioned for?

Col. Sydney. The plot for which my lord Russel and I was in prison.

Lord Anglesey. The question I am asked, is, what my lord Howard said before the trial of my lord Russel, concerning the plot; I suppose this goes as a branch of that he was accused for. I was then in the country, when the business was on foot, and used to come to town a day or two in the week, living near in Hertfordshire; and I, understanding the affliction my lord of Bedford was in, I went to give my lord a visit, we having been acquaintance of above fifty years standing, and bred together in Maudlin College, in Oxford. When I came to my lord of Bedford, and had administered that comfort that was fit for one christian to give another in that distress, I was ready to leave him, and my lord Howard came in. It was upon the Friday before my lord Howard was taken; he was taken (as I take it) upon Sunday or Monday. My lord Howard fell into the same christian office that I had been just discharging, to compassionate my lord's affliction, to use arguments to comfort and support him under it, and told him he was not to be troubled, for he had a discreet,



lord Howard said at that time, and I have nothing to say of my own knowledge more than this; but to observe, that I was present when the jury did put my lord Howard particularly to it; "What have you to say to what my lord Anglesey testifies against you?" My lord, I think, did in three several places give a short account of himself, and said it was very true; and gave them some further account why he said it, and said, he should be very glad it might have been advantageous to my lord Russel.

Col. Sydney. My lord of Clare. I desire to know of my lord of Clare, what my lord Howard said concerning this plot and me.

Lord Clare. My lord, a little after Colonel Sydney was taken, speaking of the times, he said, that if ever he was questioned again, he would never plead; the quickest dispatch was the best; he was sure they would have his life, though he was never so innocent: and discoursing of the late primate of Armagh's prophecy, 'For my part,' says he, 'I think the persecution is begun, and I believe it will be very sharp; but I hope it will be short:' and I said, I hoped so too.

Mr. Att. Gen. What answer did your lordship give to it?

Lord Clare. I have told you what I know: my lord is too full of discourse for me to answer all he says; but for Colonel Sydney, he did with great

asseverations assert, that he was as innocent as any man breathing, and used great encomiums in his praise, and then he seemed to bemoan his misfortune, which I thought real; for never was any man more engaged to another, than he was to Colonel Sydney, I believe. Then I told they talked of papers that were found, 'I am sure,' says he, 'they can make nothing of any papers of his.'

Mr. Att. Gen. When was this?

Lord Clare. This was at my house the beginning of July.

Mr. Att. Gen. How long before my lord Howard was taken?

Lord Clare. About a week before.

Mr. Att. Gen. I would ask you, my lord, upon your honour, would not any man have said as much, that had been in the plot?

Lord Clare. I can't tell, I know of no plot.

Col. Sydney. Mr. Philip Howard.

Mr. Just. Wythins. What do you ask him?

Col. Sydney. What you heard my lord Howard say concerning this pretended plot, or my being in it?

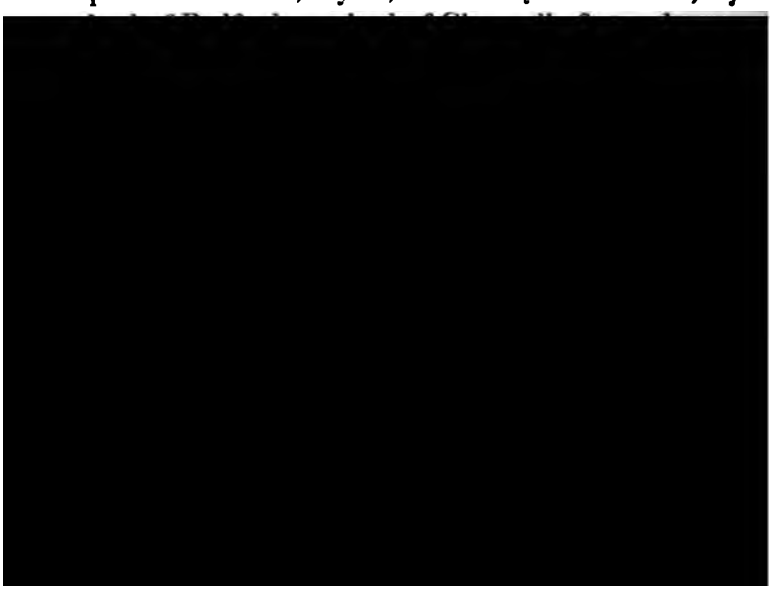
Mr. Phil. Howard. My lord, when the plot first brake out, I used to meet my lord Howard very often at my brother's house, and coming one day from Whitehall, he asked me, What news? I told him, My lord, says I, there are abundance of people that have confessed the horrid design of murthering the king, and the duke. How, says he, is such a thing possible? Says I, 'Tis so, they have all confessed it. Says he, Do you know any of their names? Yes, says I, I have heard their names. What are their names? says he. Why, says I, Colonel Rumsey, and Mr. West, and one Walcot, and others, that are in the proclamation (I can't tell whether Walcot was in hold). Says he, 'Tis impossible such a thing can be; says he, there are in all countries people that wish ill to the government, and, says he, I believe there are some here; but, says he, for any man of honour, interest, or estate, to go about it, is wholly impossible. Says I, My lord, so it is, and I believe it. Says I, My lord, do you know any of these people? No, says he, none of them; only one day, says he, passing through the Exchange, a man saluted me, with a blemish upon his eye, and he embraced me, and wished me all happiness: says he, I could not call to mind who this man was: but afterwards, I recollected myself, that I met him at my lord Shaftesbury's, and heard afterwards, and concluded his name to be.....his at whose house the king was to be assassinated.....

Mr. Att. Gen. Rombald.

Mr. Howard. Ay, Rombald. My lord, may I ask if my lord Howard be here?

L. C. J. He is there behind you.

Mr. Howard. Then he will hear me. My lord, says I, what does your lordship think of this business? Says he, I am in a maze. Says I, If you will be ruled by me, you have a good opportunity to address to the king, and all the discontented lords, as they are called; and to shew your detestation and abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, You have put one of the best notions in my head that ever was put. Says I, You are a very good penman; draw up the first address (and I believe I was the first that mentioned an address, you have had many an one since; God send them good success). Says he, I am sorry my lord of Essex is out of town, he should present it. But, says I, here is my lord Russel, my



up: says he, I doubt 'tis a sham plot; if it was a true plot, I should fear nothing. Says I, What do you put me to go to lord Privy-seal for? He is one of the king's cabinet council; do you think he will tell me? I won't go. But, says I, If you are not guilty, why would you have me go to inquire? Why, says he, Because I fear 'tis not a true plot, but a plot made upon us; and therefore, says he, there is no man free. My lord, I can say no more as to that time (and there is no man that sits here, that wishes the king better than I do). The next thing I come to, is this, I came the third day, and he was mighty sad and melancholy, that was when Colonel Sydney was taken: says I, Why are you melancholy, because Colonel Sydney is taken? Says I, Colonel Sydney was a man talked of before; why, you were not troubled for my lord Russel that is of your blood. Says he, I have that particular obligation from Colonel Sydney, that no one man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, you would have us undertake for all the people that hear you? I think you have spoken very materially, and I will observe it by and by to the jury.

Col. Sydney. Pray call Doctor Burnet.

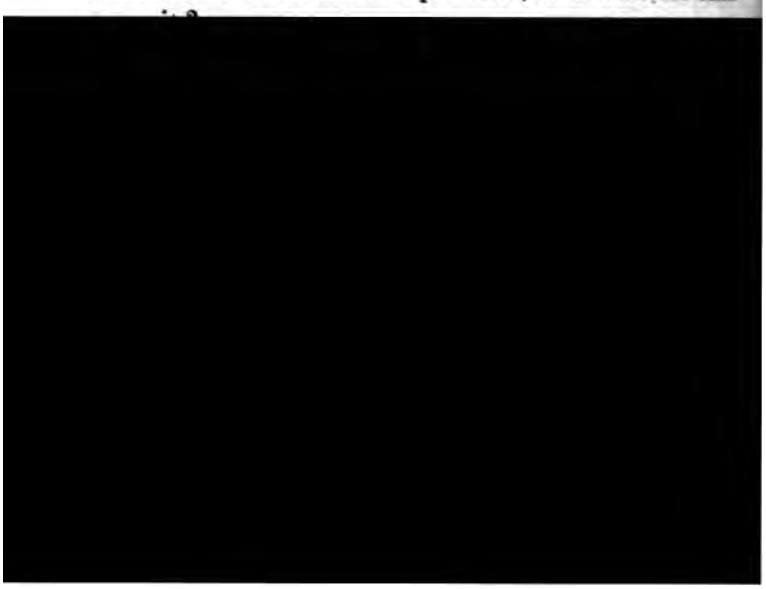
Mr. Just. Walcott. What do you ask Doctor Burnet?

Col. Sydney. I have only to ask Doctor Burnet, Whether, after the news of this pretended plot, my lord Howard came to him? and what he said to him?

Dr. Burnet. My lord, the day after this plot brake out, my lord Howard came to see me, and upon some discourse of the plot, with hands and eyes lifted up to heaven, he protested he knew nothing of any plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing. [*My lord Pagett was sent for at the prisoner's request, being in the hall.*]

Col. Sydney. My lord, I desire Joseph Ducas may be called. [*Who appeared, being a Frenchman.*]

Col. Sydney. I desire to know whether he was not in my house when my lord Howard came thither, a little after I was made a prisoner, and what he said



man. I said, if the Colonel Sydney will save his goods, he save them; if not, 'tis no matter. A little after, the lord Howard came in the house of Colonel Sydney, about eleven a clock at night. When he was in, I told him, What is this? They talk of a plot to kill the king and the duke; and I told him they spake of one general insurrection; and I told him more, that I understood that Colonel Sydney was sent into Scotland. When my lord Howard understood that, he said, God knows, I know nothing of this, and I am sure if the Colonel Sydney was concerned in the matter, he would tell me something; but I know nothing. Well, my lord, I told him, I believe you are not safe in this house, there is more danger here than in another place. Says he, I have been a prisoner, and I had rather do any thing in the world than be a prisoner again. [*Then my lord Pagett came into the court.*]

Col. Sydney. Pray, my lord, be pleased to tell the court, if my lord Howard has said any thing to you concerning this late pretended plot, or my being any party in it.

Lord Pagett. My lord, I was subpœna'd to come hither, and did not know upon what account. I am obliged to say, my lord Howard was with me presently after the breaking out of this plot, and before his appearing in that part which he now acts, he came to me; and I told him, that I was glad to see him abroad, and that he was not concerned in this disorder. He said, he had joy from several

concerning it, and he took it as an injury to him, for that it looked as if he were guilty. He said he knew nothing of himself, nor any body else. And though he was free in discourse, and free to go into any company indifferently; yet, he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Col. Sydney. Mr. Edward Howard.

Mr. Ed. Howard. Mr. Sydney, what have you to say to me?

Col. Sydney. My lord, I desire you would ask Mr. Edward Howard the same thing, What discourse he had with my lord Howard about this plot?

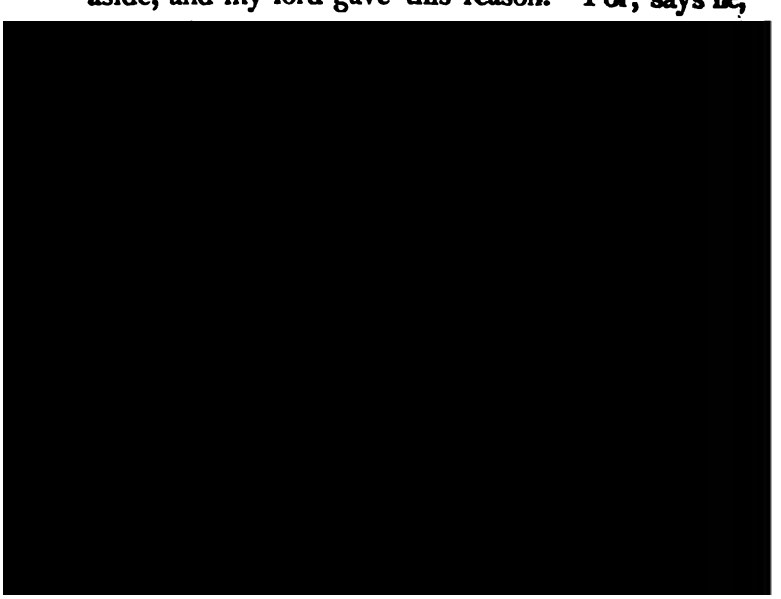
L. C. J. Mr. Howard, Mr. Sydney desires you to tell what discourse you had with my lord Howard about this plot.

wherein my lord Howard assured me, under very great asseverations, that he could neither accuse himself, nor no man living. He told me moreover, that there were certain persons of quality whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their condition both before and after they were taken. My lord, I believe in my conscience, he did this without any mental reservation, or equivocation, for he had no reason to do it with me. I add moreover, if I have any sense of my lord's disposition, I think if he had known of any such thing, he would not have stood his being taken, or have made his application to the king in this manner, I am afraid not so suitable to his quality.

L. C. J. No reflections upon any body.

Mr. Howard. My lord, I reflect upon nobody; I understand where I am, and have a respect for the place; but since your lordship has given me this occasion, I must needs say, that that reproof that was accidentally given me at the trial of my lord Russel, by reason of a weak memory, made me omit some particulars I will speak now, which are these, and I think they are material: my lord, upon the discourse of this plot, did further assure me, that it was certainly a sham, even to his knowledge. How, my lord, says I, do you mean a sham? Why, says he, such an one, cousin, as is too black for any minister of public employment to have devised: but, says he, it was forged by people in the dark, such as

Jesuits and *Papists*; and, says he, this is my conscience. Says I, my lord, if you are sure of this thing, then pray, my lord, do that honourable thing that becomes your quality, that is, give the king satisfaction as becomes you; pray make an address under your hand to the king, whereby you express your detestation and abhorrence of this thing. Says he, I thank you for your counsel: to what minister, says he, shall I apply myself? I pitched upon my lord Halifax; and I told him of my lord's desire, and I remember my lord Howard named the duke of Monmouth, my lord of Bedford, the earl of Clare, and he said he was sure they would do it; that he was sure of their innocence, and would be glad of the occasion: and I went to my lord Halifax, and told him that my lord was willing to set it under his hand, his detestation of this plot, and that there was no such thing to his knowledge. My lord Halifax very worthily received me; says he, I will introduce it. But my lord Russel being taken, this was laid aside, and my lord gave this reason. For, says he,



Mr. Att. Gen. You ought to be bound to your good behaviour for that.

L. C. J. The jury are bound by their oaths to go according to their evidence, they are not to go by men's conjectures.

Mr. Howard. May I go, my lord?

Mr. Att. Gen. My lord Howard desires he may stay: we shall make use of him.

Col. Sydney. My lord, I spake of a mortgage that I had of my lord Howard; I don't know whether it is needful to be proved; but it is so.

Lord Howard. I confess it.

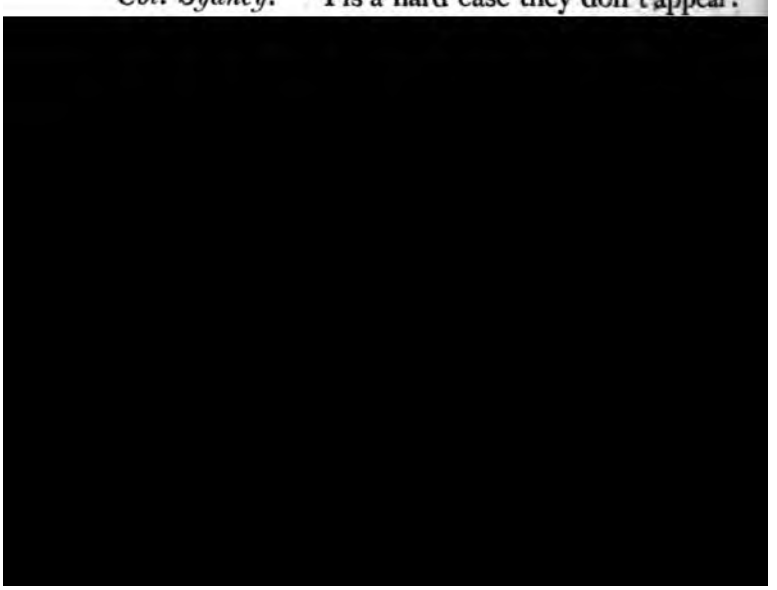
Col. Sydney. Then, my lord, here is the other point; he is under the fear, that he dare not but say what he thinks will conduce towards the gaining his pardon; and that he hath expressed, that he could not have his pardon, but he must first do this drudgery of swearing. I need not say, that his son should say, that he was sorry his father could not get his pardon unless he did swear against some others.

Col. Sydney. Call Mr. Blake. [*Who appeared.*] My lord, I desire he may be asked, Whether my lord Howard did not tell him that he could not get his pardon yet, and he could ascribe it to nothing

but that the drudgery of swearing must be over first. [*Then the Lord Chief Justice asked the question.*]

Mr. Blake. My lord, I am very sorry I should be called to give a public account of a private conversation. How it comes about I don't know. My lord sent for me about six weeks ago, to come and see him. I went, and we talked of news. I told him I heard nobody had their pardon, but he that first discovered the plot. He told me no, but he had his warrant for it: and, says he, I have their word and honour for it; but, says he, I will do nothing in it till I have further order; and, says he, I hear nothing of it, and I can ascribe it to no other reason, but I must not have my pardon till the drudgery of swearing is over. These words my lord said; I believe my lord won't deny it. [*Then Mr. Sydney called Mr. Hunt and Burroughs, but they did not appear.*]

Col. Sydney. 'Tis a hard case they don't appear:



my lord Howard said to you at my house concerning the plot, and my being in it?

Tracey. Sir, he said he knew nothing of a plot, he protested, and he was sure Colonel Sydney knew nothing of it. And he said, if you knew any thing of it, he must needs know of it, for he knew as much of your concerns as any one in the world.

Col. Sydney. Did he take God to witness upon it?

Tracey. Yes.

Col. Sydney. Did he desire my plate at my house?

Tracey. I can't tell that: he said the goods might be sent to his house.

Col. Sydney. Penwick, what did my lord Howard say in your hearing concerning the pretended plot, or my plate carrying away?

Penwick. When he came he asked for your honour; and they said your honour was taken away by a man to the Tower for the plot; and then he took God to witness he knew nothing of it, and believed your honour did not neither. He said he was in the Tower two years ago, and your honour, he believed, saved his life.

Col. Sydney. Did he desire the plate?

Penwick. Yes, and said it should be sent to his house to be secured. He said it was only malice. [*Mr. Wharton stood up.*]

Mr. Wharton. 'Tis only this I have to say, that if your lordship pleases to shew me any of these sheets of paper, I will undertake to imitate them in a little time that you shan't know which is which. 'Tis the easiest hand that ever I saw in my life.

Mr. Att. Gen. You did not write these, Mr. Wharton?

Mr. Wharton. No, but I will do this in a very little time if you please.

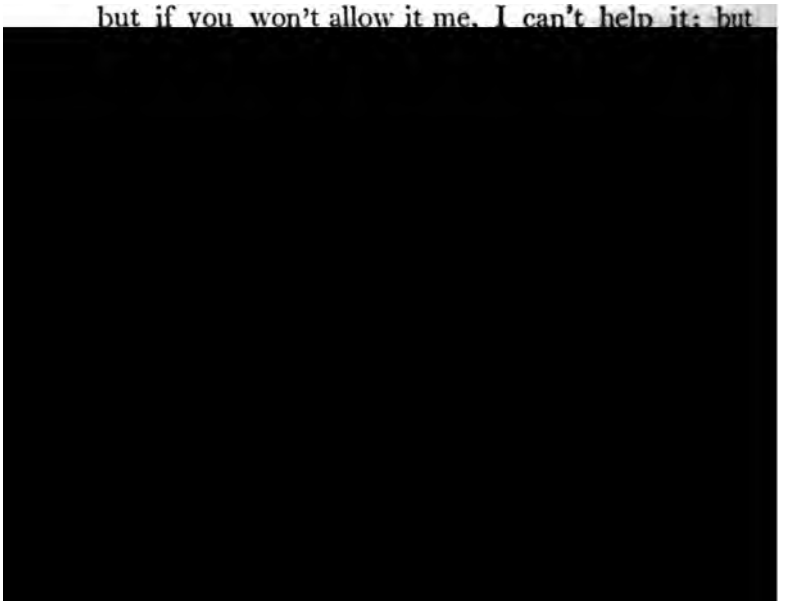
L. C. J. Have you any more witnesses?

[redacted]

That concerning war, is not, unless it be levied: ow, my lord, I cannot imagine to which of these hey refer my crime; and I did desire your lordship o explain it. For to say that men did meet to onspire the king's death, and he that gives you the ccount of the business does not speak one word of t, seems extravagant; for conspiracies have ever heir denomination from that point to which they end; as a conspiracy to make false coin infers nstruments and the like. A conspiracy to take way a woman, to kill, or rob, are all directed to that end. So conspiring to kill the king, must immediately aim at killing the king. The king hath two capacities, natural and politic; that which is the politic can't be within the statute; in that sense he never dies; and 'tis absurd to say it should be a fault to kill the king that can't die. So then it must be the natural sense it must be understood in, which must be done by sword, by pistol, or any other way. Now if there be not one word of this, then that is utterly at an end, though the witness had been good.

The next point is concerning levying of war. Levying of war is made treason there, so it be proved by overt act: but an overt act of that never was, or can be pretended here. If the war be not levied, 'tis not within the act; for conspiring to levy war is not in the act. My lord, there is no man that thinks that I would kill the king, that knows me; I am not a man to have such a design; perhaps I may say I have saved his life once. So that it must be by implication; that is, it is first imagined that I

intended to raise a war, and then 'tis imagined that war should tend to the destruction of the king. Now I know that may follow; but that is not natural or necessary; and being not natural or necessary, it can't be so understood by the law. That it is not, is plain; for many wars have been made, and the death of the king has not followed. David made war upon Saul, yet nobody will say he sought his death; he had him under his power and did not kill him. David made war upon Ishbosheth, yet did not design his death: and so, in England and France, kings have been taken prisoners, but they did not kill them. King Stephen was taken prisoner, but they did not kill him. So that 'tis two distinct things, to make war, and to endeavour to kill the king. Now as there is no manner of pretence, that I should endeavour to kill the king directly, so it can't be by inference, because 'tis treason under another species. I confess I am not fit to argue these points; I think I ought to have counsel: but if you won't allow it me, I can't help it; but

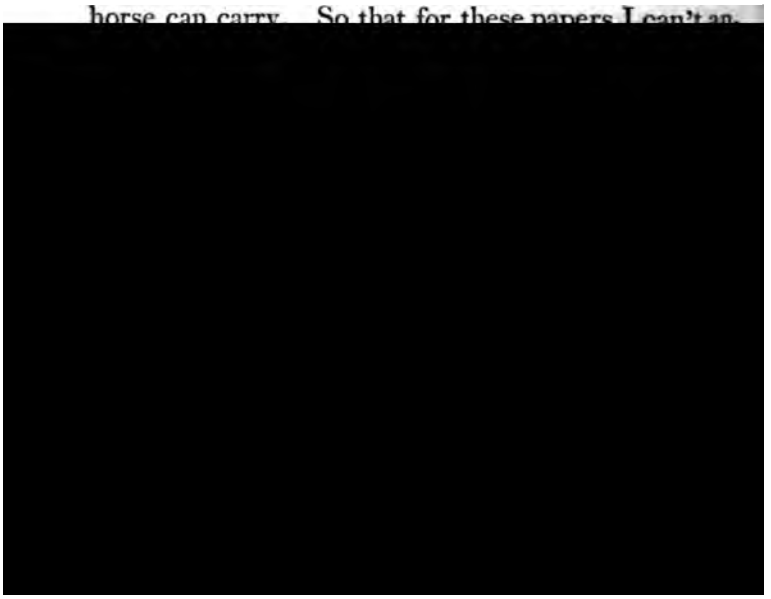


war, nor conspiring to make war. Besides, I say, 'tis not the best man's evidence here would be good in this case, because the law requires two.

The next thing is the business of Aaron Smith, which my lord tells so imperfectly, and so merely conjectural, that there is nothing in it, but his rhetoric in setting it out. He tells you of a letter sent with him; but he does not tell you by whom writ, what was in it, or whether it was delivered or no; so that I think we may lay that aside as the other, as things nothing in them at all. Then, says Mr. Attorney, these Scotch gentlemen are come to town. I profess I never heard the names of one of them till he named them to me in the Tower. I have not sent myself, nor writ a letter into Scotland never since the year '59; nor do I know one man in Scotland to whom I can write, or from whom I ever received one. I returned into England in the year '77, and since that time have not writ nor received a letter from Scotland. Then, some gentlemen came hither. What is that to me? I never saw one of the Campbells in my life, nor Monro. If any one can prove I have had communication with them, I will be glad to suffer.

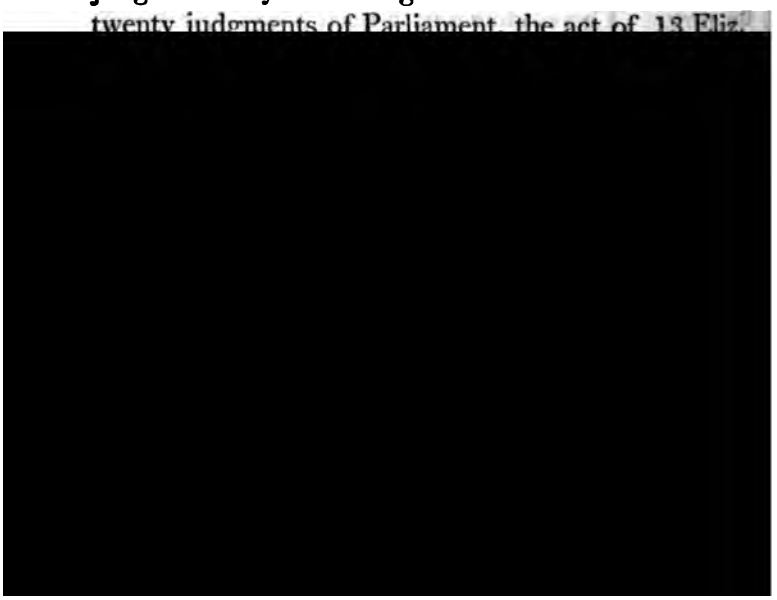
Then here are papers: if any thing is to be made of them, you must produce the whole, for 'tis impossible to make any thing of a part of them. You ask me, what other passage I would have read? I don't know a passage in them; I can't tell whether it be good or bad. But if there are any papers

found, 'tis a great doubt whether they were found in my study or no, or whether they be not counterfeit; but though that be admitted that they were found in my house, the hand is such that it shews they have been writ very many years. Then that which seems to be an account of the sections and chapters, that is but a scrap; and what if any body had, my lord, either in my own hand or another's, found papers that are not well justifiable, is this treason? Does this imagine the death of the king? Does this reach the life of the king? If any man can say I ever printed a sheet in my life, I will submit to any punishment. Many others, my lord, they write, and they write what comes into their heads. I believe there is a brother of mine here has forty quires of paper written by my father, and never one sheet of them was published; but he writ his own mind, to see what he could think of it another time, and blot it out again, may be. And I myself, I believe, have burned more papers of my own writing, than a horse can carry. So that for these papers I can't an-



tention or doing any thing. They did not so much inquire whether there was men in the country, arms, or ammunition. A war to be made by five or six men, not knowing one another, nor trusting one another! What said Dr. Coxe in his evidence at my lord Russel's trial, of my lord Russel's trusting my lord Howard? He might say the same of others. So that, my lord, I say these papers have no manner of coherence, no dependance upon any such design. You must go upon conjecture; and, after all, you find nothing but only papers, never perfect, only scraps written many years ago, and that could not be calculated for the raising of the people. Now, pray what imagination can be more vain than that? and what man can be safe if the king's counsel may make such (whimsical I won't say, but) groundless constructions? Mr. Attorney says the plot was broken to the Scots (God knows we were neither broken nor joined) and that the Campbells came to town about that time I was taken; and in the mean time, my lord Howard, the great contriver of all this plot, who was most active, and advised the business that consisted of so much finesse, he goes there and agrees of nothing: and then goes into Essex upon great, important business, greater than the war of England and Scotland; to what purpose? To look after a little pimping manor; and what then? Why, then, it must be laid aside, and he must be idle five weeks at the Bath, and there is no inquiring after it. Now I desire your lordship to consider, whether there be a possibility for any men, that have the sense of porters or grooms, to do such things as

he would put upon us. I would only say this, if Mr. Attorney be in the right, there was a combination with the Scots, and then this paper was writ: for those that say I did it, say I was doing of it then; and by the notes, there is work enough for four or five years, to make out what is mentioned in those scraps of paper, and this must be to kill the king. And I say this, my lord, that, under favour, for all constructive treasons you are to make none, but to go according to plain proof; and that these constructive treasons belong only to Parliament, and by the immediate proviso in that act. Now, my lord, I leave it to your lordship, to see whether there is in this any thing that you can say is an overt act of treason mentioned in 25 E. 3. If it be not plainly under one of the two branches, that I have endeavoured to kill the king, or levied war, then 'tis matter of construction, and that belongs to no court, but the Parliament. Then, my lord, this hath been adjudged already in Throgmorton's case. There are twenty judgments of Parliament, the act of 13 Eliz.



of 1 Mary. 1 Ed. 6. 1 Eliz. 5 Eliz. 18. another 13 Car. shew this. Now, my lord, I say that the business concerning the papers, 'tis only a similitude of hands, which is just nothing. In my lady Carr's case, it was resolved to extend to no criminal cause; if not to any, then not to the greatest, the most capital. So that I have only this to say, that I think 'tis impossible for the jury to find this matter; for the first point you proved by my lord Howard, that, I think, is nobody; and the last concerning the papers, is only imagination from the similitude of hands. If I had published it, I must have answered for it; or if the thing had been whole, and mine, I must have answered for it; but for these scraps never shewed any body, that, I think, does not at all concern me. And I say, if the jury should find it, (which is impossible they can) I desire to have the law reserved unto me.

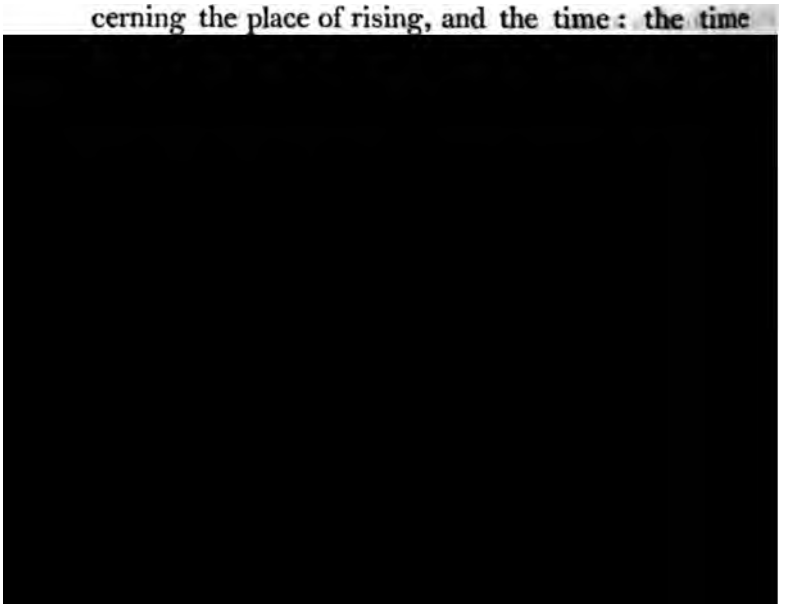
Mr. Sol. Gen. My lord, and you gentlemen of the jury. The evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The crime the prisoner stands accused for, is compassing and imagining the death of the king. That, which we go about to prove that compassing and imagining by, is by his meeting and consulting how to raise arms against the king, and by plain matter in writing under his own hand, where he does affirm, it is lawful to take away and destroy the king. Gentlemen, I will begin with the first part of it, the meeting and consultation to raise arms against the king.

The prisoner, gentlemen, hath endeavoured to avoid the whole force of this evidence by saying, that this in point of law can't affect him, if it were all proved; for this does not amount to a proof of his compassing and imagining the death of the king: and he is very long in interpreting the act of Parliament to you of 25 E. 3. and dividing of it into several members or branches of treason; and does insist upon it, that though this should be an offence within one branch of the statute, yet that is not a proof of the other, which is the branch he is proceeded upon, that is, the first clause against compassing and imagining the death of the king. And, says he, conspiring to levy war is not so much as one branch of that statute, but it must be war actually levied. This is a matter he is wholly mistaken in, in point of law. It hath been adjudged over and over again, that an act which is in one branch of that statute, may be an overt act to prove a man guilty of another branch of it. As levying war is an overt act to prove a man guilty of conspiring the death of the

He hath mentioned some other things; as, that there must be two witnesses to every particular fact; and one witness to one fact, and another to another, is not sufficient. It hath been very often objected, and as often over-ruled: it was over-ruled solemnly in the case of my lord Stafford. Therefore, if we have one witness to one overt act, and another to another, they will be two witnesses in law to convict this prisoner.

In the first part of our evidence, we give you an account of the general design of an insurrection that was to have been; that this was contrived first when my lord Shaftesbury was in England; that after my lord Shaftesbury was gone, the business did not fall, but they thought fit to revive it again; and, that they might carry it on the more steadily, they did contrive a council among themselves of six, whereof the prisoner at the bar was one. They were the duke of Monmouth, my lord of Essex, my lord Howard, my lord Russel, the prisoner at the bar, and Mr. Hambden. This council they contrived to manage this affair, and to carry on that design that seemed to fall by the death of my lord Shaftesbury; and they met. This we give you an account of, first by witnesses that gave you an account in general of it: and though they were not privy to it, yet they heard of this council, and that Colonel Sydney was to be one of this council. This, gentlemen, if it had stood alone by itself, had been nothing to affect the prisoner at all. But this will shew you, that this was discoursed among them that were in the conspiracy.

Then my lord Howard gives you an account, that first the duke of Monmouth, and he, and Colonel Sydney met; and it was agreed to be necessary to have a council that should consist of six or seven, and they were to carry it on: that the duke of Monmouth undertook to dispose my lord Russel to it, and Colonel Sydney to dispose the earl of Essex and Mr. Hambden; that these gentlemen did meet accordingly, and the substance of their discourse was, taking notice how the design had fallen upon the death of my lord Shaftesbury; that it was fit to carry it on before men's inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a business communicated to so many, yet for all that, it was kept very secret, and nobody had made any mention of it, which they looked upon as a certain argument that men were ready to engage in it. This encouraged them to go on in this conspiracy. Then when the six met at Mr. Hambden's house, they debated concerning the place of rising, and the time: the time



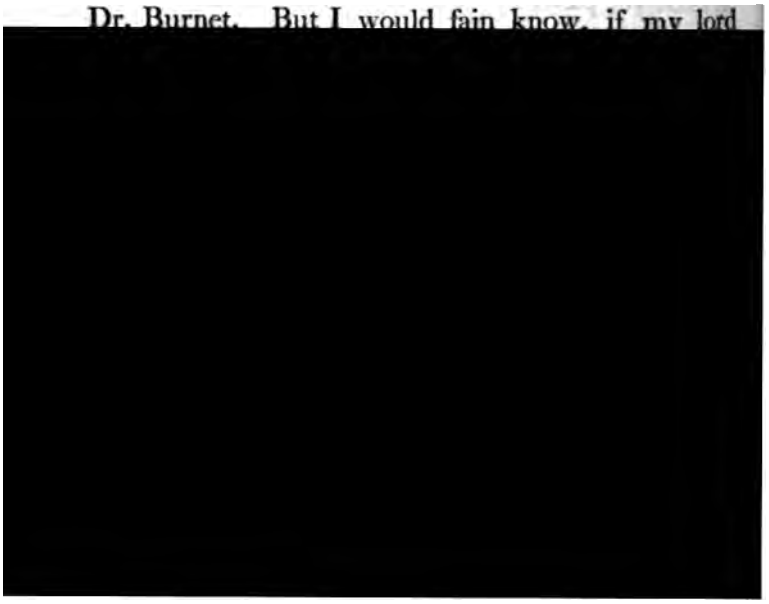
pose. But there they began to consider with themselves, being they were to destroy this government, what they should set up in the room of it; to what purpose they engaged. For they did very wisely consider, if this be only to serve a turn, and to make one man great, this will be a great hindrance in their affair: therefore, they thought it was necessary to engage upon a public account, and to resolve all into the authority of a Parliament, which surely they either thought to force the king to call; or otherwise, that the people might call a Parliament, if the king refused; and so they to choose their own heads.

But still they were upon this point, that it was necessary for their friends in Scotland to have their counsels united with them; and in order to that, it was necessary to contrive some way to send a messenger into Scotland, to bring some men here to treat and consult about it; and Colonel Sydney is the man that does engage to send this messenger: and he had a man very fit for his turn, that is Aaron Smith, whom he could confide in; and him he undertook to send into Scotland. This messenger was to fetch my lord Mervin, the two Campbells, and Sir John Cockram. Colonel Sydney, as he engaged to do this, so afterwards he did shew to my lord Howard money, which he affirmed was for that business: he says, it was a sum of about sixty guineas, and he believes he gave it him; for that Colonel Sydney told him, that Aaron Smith was gone into Scotland; that the pretence was not barefaced, to invite them over to consult of a rebellion, but to con-

sult about the business of Carolina, being a plantation for the persecuted brethren, as they pretended in Scotland. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly; that is, the two Campbells, and Sir John Cockram: and the discourse with Sir Andrew Foster was according to this cant, that was agreed on beforehand, concerning a plantation in Carolina. This it was that was pretended for their coming hither; but the true errand was, the business of the insurrection intended. Gentlemen, that they came upon such a design, is evident from the circumstances: they came about the time the business brake out; and in that time suspiciously changing their lodging, they were taken making their escape, and this at a time before it was probable to be known abroad that these men were named as part of the conspirators. These things do very much verify the evidence my lord Howard hath given, and there is nothing has been said does at all invalidate it. The sending of Aaron Smith into Scotland, and his going, and the coming of these men,

ford, and enlarge in the commendations of his son, and say he was confident he knew nothing of the design, and he must be innocent. Gentlemen, this is the nature of the most part of the evidence. My lord of Clare, his evidence is much the like; that is, his denying that he knew of any plot. Now, here is my lord Howard, under a guilt of high treason; for he was one of those conspirators not yet discovered, nor no evidence of any discourse leading to any thing that should give occasion to him to protest his innocency: and, says he, I know nothing of the plot. You would have wondered if he should have been talking in all places his knowledge, and declaring himself: his denying of it under the guilt, when he was not accused, is nothing to his confession when he comes to be apprehended and taken for it. Here Mr. Philip Howard says, he had several discourses with him about this business, upon the breaking out of the plot, and that he advised him to make an address, and that this was a thing that would be very acceptable, and very much for their vindication; and my lord Howard (he says) thanked him for his very good advice, and said, he would follow it: and presently after, when my lord Russel was apprehended, Mr. Howard tells him the news that my lord Russel was taken; this was sudden to him. And what says he? "We are all undone." When my lord Russel, that was one of this council that was a secret council, and could not be traced but by some of themselves, when he is apprehended, then he falls out into this expression: "We are all undone." This is an argument my lord Howard had a guilt upon him.

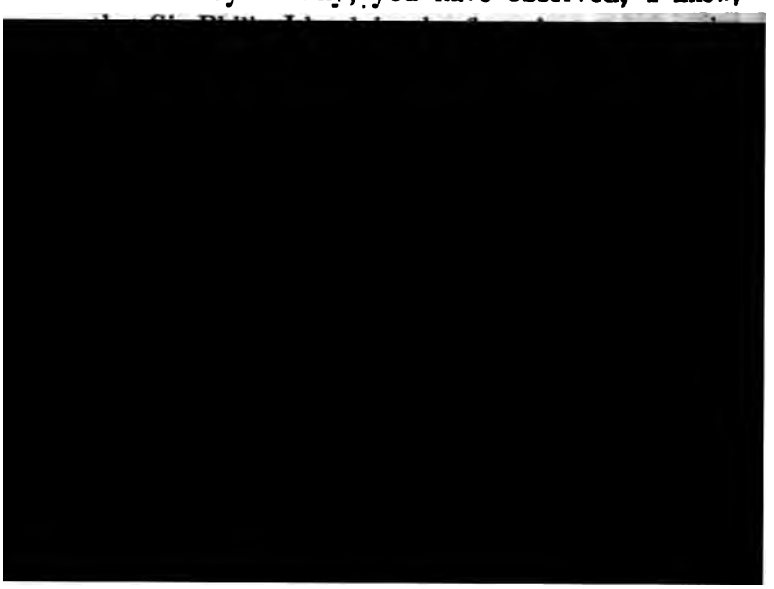
For, why were they all undone, that my lord Russel was apprehended, any more than upon the apprehending the rest? Yes, because my lord was one of the six, and now 'twas come to the knowing of that part of the conspiracy. It was traced to the council of six, which in all likelihood would break the neck of the design. Now though he put it off afterwards, saying, "I believe it is a sham plot," yet this was but a trivial put-off. And then, when Colonel Sydney is taken, the same witness, Mr. Howard, tells you, my lord was very sad and melancholy; for then he had greater reason to lie under an apprehension of being detected. Therefore, gentlemen, this will rather confirm the truth of the evidence, than any way impeach it. Then (for I would repeat it all, though I think it hath no great weight in it) Dr. Burnet says, that after the plot, my lord Howard pretended he knew of no plot. This is no more than was testified by the other lords before; and all it imports, is, that my lord did not discover himself to Dr. Burnet. But I would fain know, if my lord



his debts by taking away his life: and, in further prosecution of this malice, would have seized upon his goods. But the evidence does not receive such construction; for my lord Howard only offered Colonel Sydney the civility of his house to protect his plate and goods. Now, gentlemen, there were two other witnesses, my lord Pagett, and Mr. Edward Howard; but they say no more than the rest of them, that he did protest his innocency, and Mr. Howard says, he advised him to make an address to the king. This, gentlemen, I repeat, not that it is material, but for no other reason, than because Colonel Sydney had produced it; and so we are to think he intended to make some use of it: but I can't see any inference to be drawn from it. There is one witness more, and that is Mr. Blake, to the credit of my lord Howard, who comes here and says, that when he discoursed about a pardon, my lord should say, that he had a warrant for his pardon, but that he had not yet passed it, and could not yet; and he apprehended the reason was, because the drudgery of swearing was not over. But this is but what my lord Howard had conjectured: first, it does not appear, that there is any promise of pardon at all to my lord Howard, or any terms imposed on him. In the next place, whatever expectation he has of a pardon, he can't reasonably hope for it without making a clear discovery of all he knows: for to stifle his evidence he has given, is not a way to deserve a pardon of his prince. Therefore, gentlemen, whatever expressions were used, though he called it the drudgery of

swearing, however unwilling he is to come to it, and though he gives it very many hard names, and might think it very harsh to come and own himself to be one of the conspirators, it might be irksome, and very irksome; yet none of them tell you, that my lord Howard should say, that what he said was not true. Now he has come and given his evidence, and you have heard all these objections against it, and not one of them touch it in the least.

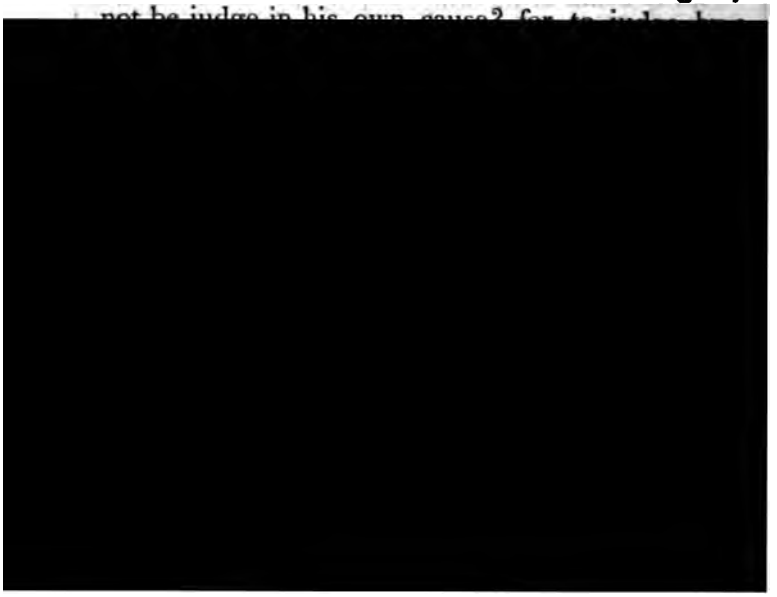
I come, in the next place, to the other part of the evidence, the papers found in Colonel Sydney's house. And in the first place, he objects, they can't affect him; for, says he, there is no proof they were found in my house, no proof they were written by me; for comparison of hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpose: they are an answer to a polemical discourse, wherewith he entertained himself privately in his study. Why, you have observed, I know,



ıth been allowed; and that is, for men to come that ıow and are acquainted with the hand-writing, and ear they know his hand-writing, and they believe is to be his hand. You have heard from Mr. ıeppard, a man that used to transact business for m, pay money for him; and Mr. Cooke, and Mr. ary, men of known credit in the city of London, at have had the like dealings with Colonel Sydney, d they swear this is his hand-writing, as they rily believe. So that, gentlemen, this proof to ıu of Colonel Sydney's hand-writing, does verify r Philip Lloyd, that these papers must be found ere, if Colonel Sydney writ them: and then this ing found, that they were writ by him, the next ing will be, how far this will be an evidence to ove his compassing and imagining the death of e king. Compassing and imagining the death of e king, is the act of the mind, and is treason whilst remains secret in the heart, though no such trea- n can be punished, because there is no way to ove it: but when once there is any overt act, that , any thing that does manifest and declare such in- ıtion, then the law takes hold of it, and punishes as high treason.

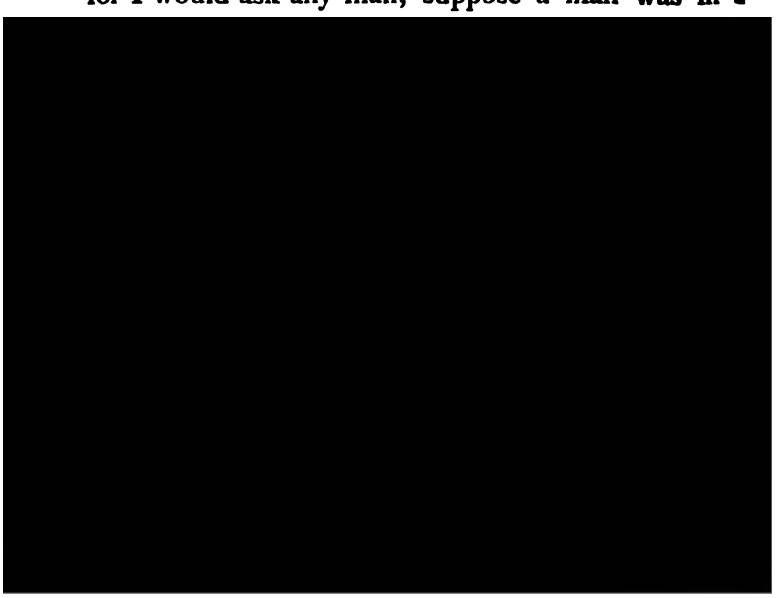
Now after this evidence, I think no man will ubt, whether it was in the heart of the prisoner at e bar to destroy the king. But first he objects, at this is a part of a book, and unless you take the hole, nothing can be made of it; as it is in wrest- g of texts of scripture, says he, you may as well y, that David says there is no God, because

David hath said, '*The fool hath said in his heart there is no God.*' But, gentlemen, the application won't hold; for you see a long discourse hath been read to you, a continued thread of argument; 'tis not one proposition, but a whole series of argument: these are the positions, "That the king derives all his power from the people; that 'tis originally in the people, and the measure of subjection must be adjudged by the Parliament; and if the king does fall from doing his duty, he must expect the people will exact it." And this he has laid down as no way prejudicial to him; for, says he, the king may refuse the crown, if he does not like it upon these terms. But, says he, if he does accept it, he must expect the performance will be exacted, or revenge taken by those he hath betray'd. Then next he sets up an objection, and then argues against it: Ay, but shall the people be judge in their own cause? And thus he answers: It must be so; for is not the king a judge in his own cause? How can any man else be tried, or convicted of any offence, if the king may



oke,. or that is made a yoke which ought not to be ne).; the injury is therefore in imposing the yoke, id there can be none at all in breaking of it." But e goes on in his book, and that is by way of answer) an objection, That if there be no injury, yet there ay be inconvenience, if the headless multitude ould shake off the yoke. But, says he, I would in know how the multitude comes to be headless: nd there he gives many instances in story; and om foreign nations he comes home to the English, nd tells you how all rebellions in latter ages have een headed; and tells you the Parliament is the ead, or the nobility and gentry that compose it; nd when the king fails in his duty, the people may all it. The multitude therefore is never headless, ut they either find or create an head. So that here a plain and an avowed principle of rebellion estabshed upon the strongest reason he has to back it. Gentlemen, this with the other evidence that hath een given, will be sufficient to prove his compassng the death of the king. You see the affirmations e makes: when kings do break their trust, they may e called to account by the people. This is the doctrine he broaches and argues for: he says in his ook in another part, that the calling and dissolving f Parliaments is not in the king's power. Gentlemen, you all know how many Parliaments the king ath called and dissolved; if it be not in his power, e hath done that that was not in his power, and so ontrary to his trust. Gentlemen, at the entrance nto this conspiracy they were under an apprehension hat their liberties were invaded; as you hear in the

evidence of my lord Howard, that they were just making the insurrection upon that tumultuous opposition of electing of sheriffs in London. They enter into a consultation to raise arms against the king; and it is proved by my lord Howard, that the prisoner at the bar was one. Gentlemen, words spoken upon a supposition will be high treason, as was held in king James' time, in the case of Collins, in Roll's Reports, "the king being excommunicate, may be deposed and murdered," without affirming he was excommunicated: and this was enough to convict him of high treason. Now, according to that case, to say, the king having broken his trust, may be deposed by his people, would be high treason; but here he does as good as affirm the king had broke his trust, when every one sees the king hath dissolved Parliaments: this reduces it to an affirmation. And though this book be not brought to that council to be perused, and there debated, yet it will be another, and more than two witnesses, against the prisoner: for I would ask any man, suppose a man was in a

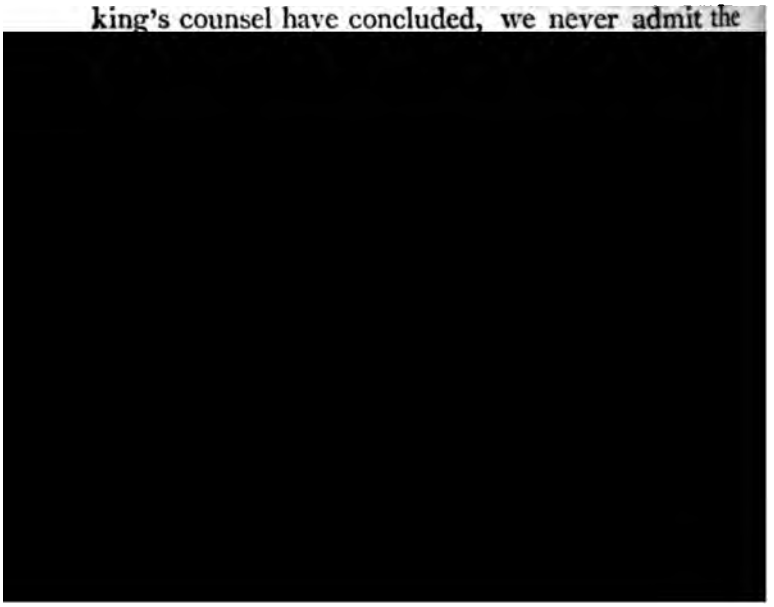


against the king, and here is his own book says, it is lawful for a man to rise in arms against the king, if he break his trust; and in effect he hath said, the king hath broken his trust: therefore this will be a sufficient demonstration what the imagination of the heart of this man was, that it was nothing but the destruction of the king and the government, and indeed of all governments. There can be no such thing as government if the people shall be judge in the case: for what so uncertain as the heady and giddy multitude? Gentlemen, I think this will be a sufficient evidence of his consulting the death of the king. You have here the prisoner at the bar that is very deep in it. Indeed some men may by passion be transported into such an offence, and though the offence be never the less, whatever the motives are, yet in some it is less dangerous: for those that venture, upon passion, to raise commotions and rebellion, are not always so much upon their guard, but that they may make some false steps to entrap themselves; but this gentleman proceeds upon a surer foundation, it his reason, it is his principle, it is the guide of all his actions, it is that by which he leads and directs the steady course of his life. A man convinced of these principles, and that walks accordingly, what won't he do to accomplish his designs? How wary will he be in all his actions, all reasoning with himself which way to bring it most securely about. Gentlemen, this is the more dangerous conspiracy in this man, by how much the more it is rooted in him: and how deep it is, you see, when a man shall write as his principle, that it

is lawful for to depose kings, they breaking their trust, and that the revolt of the whole nation cannot be called rebellion. It will be a very sad case when people act thus according to their consciences, and do all this for the good of the people, as they would have it thought; but this is the principle of this man. Gentlemen, we think we have plainly made it out to you, and proved it sufficiently, that it was the imagination of his heart to destroy the king, and made sufficient proof of high treason.

Col. Sydney. Give me leave, my lord, to say a very few words. I desire Mr. Solicitor would not think it his duty to take away men's lives any how: first, we have had a long story.....

L. C. J. Nay, Mr. Sydney, we must not have vying and revying. I asked you before, what you had to say: the course of evidence is, after the king's counsel have concluded, we never admit the



he king's counsel have said, of which there is
of to make it out, must not be taken into any
eration.

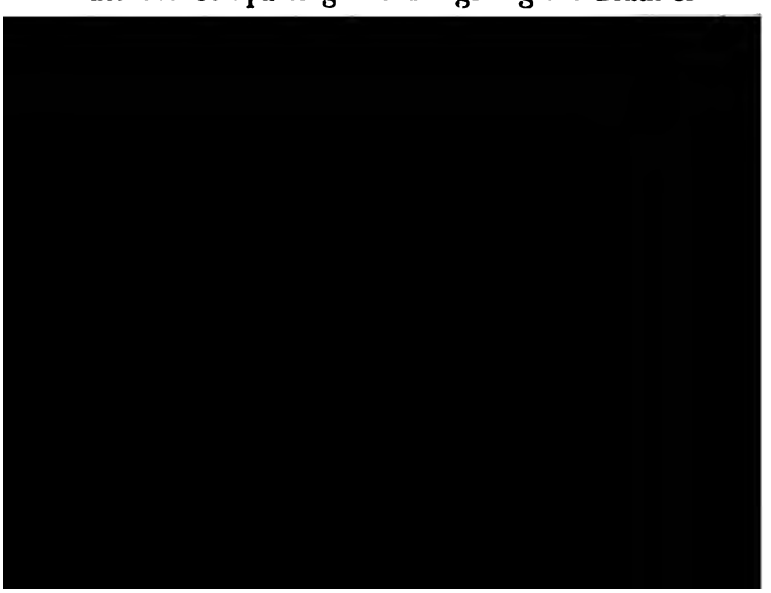
Sydney. Then, my lord, here is a place or
old Hales' [*turning over my lord Hales' book*]
: overt act of one treason not being an overt
another. Your lordship knows Coke and
were both against it. [*He reads.*] "Com-
g by bare words is not an overt act; con-
g to levy war is no overt act."

Sol. Gen. I desire but one word more for
m sake, as well as for the prisoner's, and that
it if I have said any thing that is not law, or
peated or misapplied the evidence which hath
given, I do make it my humble request to your
ip to rectify those mistakes, as well in point of
as point of law; for God forbid the prisoner
l suffer by any mistake!

C. J. Gentlemen, the evidence has been long,
is a cause of great concernment, and it is far
the thoughts of the king, or from the thoughts
ire of any of his judges here, to be instru-
l to take away the life of any man that by law
e ought not to be taken away. For I had rather
guilty men should escape, than one innocent
uffer. The question is, Whether upon all the
nce you have heard against the prisoner, and
idence on his behalf, there is evidence sufficient

to convict the prisoner of the high treason he stands charged with. And as you must not be moved by the denial of the prisoner further than as it is backed with proof, so you are not to be inveigled by any insinuations made out against the prisoner at the bar, further or otherwise than as the proof is made out to you. But it is usual, and it is a duty incumbent on the king's counsel to urge against all such criminals, whatsoever they observe in the evidence against them, and likewise to endeavour to give answers to the objections that are made on their behalf. And therefore, since we have been kept so long in this cause, it won't be amiss for me and my brothers, as they shall think fit, to help your memory in the fact, and discharge that duty that is incumbent upon the court as to the points of law.

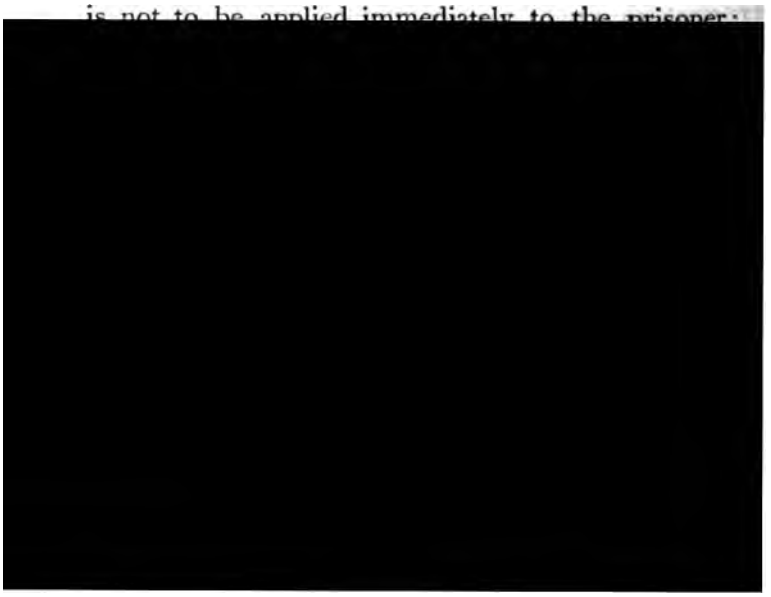
This indictment is for high treason, and is grounded upon the statute of 25 E. 3. by which statute the compassing and imagining the death of the



they were at the time of that act. I am also to tell you, that in point of law, it is not only the opinion of us here, but the opinion of them that sat before us, and the opinion of all the judges of England, and within the memory of many of you, that though there be two witnesses required to prove a man guilty of high treason; yet it is not necessary there should be two witnesses to the same thing at one time. But, if two witnesses prove two several facts that have a tendency to the same treason, they are two witnesses sufficient to convict any man of high treason. In the case of my lord Stafford, in Parliament, all the judges assisting, it is notoriously known, that one witness to a conspiracy in England, and another to a conspiracy in France, were held two witnesses sufficient to convict him of high treason. In the next place, I am to tell you, that though some judges have been of opinion, that words of themselves were not an overt act; but my lord Hales, nor my lord Coke, nor any other of the sages of the law, ever questioned but that a letter would be an overt act, sufficient to prove a man guilty of high treason; for, *scribere est agere*. Mr. Sydney says, the king is a politic person; but you must destroy him in his natural capacity, or it is not treason. But I must tell you, if any man compass to imprison the king, it is high treason: so was the case of my lord Cobham. And my lord Coke, when he says, If a man do attempt to make the king do any thing by force and compulsion, otherwise than he ought to do, that it is high treason within that act of 25 E. 3; but if it were an indictment only for the levying of war, there

must be an actual war levied. But this is an indictment for compassing the death of the king; and the other treason mentioned in that act of Parliament, for the levying war, may be given in evidence to prove the conspiring the king's death: for 'tis rightly told you by the king's counsel, that the imagination of a man's heart is not to be discerned; but if I declare such my imagination by an overt act, which overt act does naturally evince that the king must be deposed, destroyed, imprisoned, or the like, it will be sufficient evidence of treason within that act.

In the next place, having told you what the law is, for, gentlemen, 'tis our duty upon our oaths, to declare the law to you, and you are bound to receive our declaration of the law; and upon this declaration, to enquire whether there be a fact sufficiently proved, to find the prisoner guilty of the high treason of which he stands indicted: and for that I must tell you, whatever happens to be hearsay from others, it is not to be applied immediately to the prisoner:

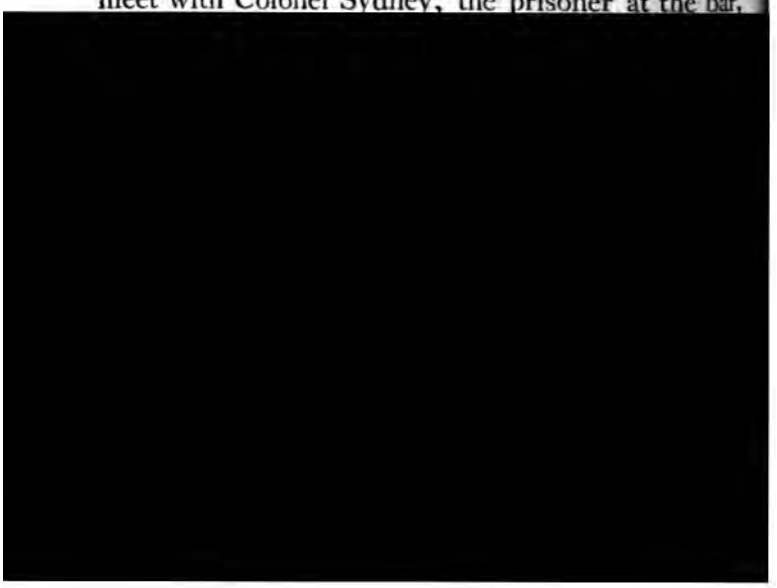


thus far applicable to the business before you; that 'tis plain by persons that don't touch the prisoner at the bar (and I am sorry any man makes a doubt of it at this time of day) that there was a conspiracy to kill the king; for after so full a proof in this place, and in others, and the execution and confession of several of the offenders, I am surprised to observe that the prisoner at the bar, and some others present, seem not to believe it.

But, gentlemen, you hear the first witness, I speak of West: he tells you he had the honour to be acquainted with Mr. Sydney, and that he had discourse with Mr. Walcot, a person convicted and executed for this horrid conspiracy. Why, says he, he told me at my chamber, that they were not only the persons concerned, but that there were other persons of great quality that had their meetings for the carrying on the business in other places. And Ferguson, that was the ringleader in this conspiracy, told him there was a design of a general insurrection; it was once laid down, but is now taken up again. There are other counsellors of great importance; and he names, among the rest, the prisoner at the bar. Mr. West goes a little further, and he tell you this: says he, He did not only tell me so, but that there was a design to conciliate a correspondence with some persons in Scotland, and they were to do it under the cant of having business in Carolina. There is Mr. Keeling, he tells you too, there was a design for a general and public insurrection; that he was present with the Goodenoughs, one and t'other; and that

they had taken upon them to divide, and did divide the city into such and such districts. And what was the business? It was, that there might be a general insurrection; might be an insurrection, not only to destroy the king and the duke, but to destroy all the king's loyal subjects; and, in taking away their lives, to take away the life of monarchy itself, and to subvert the religion established by law. Then comes in colonel Rumsey, and he gives you an account that he heard of such things in Mr. West's chamber; and tells you he had received such intelligence. And all these give you an account that there was such a design to kill the king; and this is the substance of the general evidence produced to prove the conspiracy.

Then to make this matter come home to the prisoner at the bar, first my lord Howard gives you an account, and does directly swear, that about the middle or latter end of January last, he happened to meet with Colonel Sydney, the prisoner at the bar,



Mr. Hambden; and he tells you, the duke of Monmouth undertook for my lord Russel and the rest; and that was the result of one meeting. He goes yet further: that, pursuant to this, it was communicated to those persons so to be engaged, and the place and time was appointed; the place, Mr. Hambden's house; but is not so possitive to the time, but only to the place, and persons. He says, all these persons met, and he gives you an account that Mr. Hambden, because it was necessary for some persons to break silence, gave some short account of the design of their meeting, and made some reflections upon the mischiefs that attended the government, and what apprehensions many people had upon the late choice of sheriffs, and that there had been a mal-administration of public justice; that it was fit some means should be used to redress these grievances. He can't tell you positively, what this man or that man said there; but says, that all did unanimously consent to what was then debated about an insurrection; and in order to it, they discoursed about the time when it should be; and that they thought fit it should be done suddenly, when men's minds were wound up to that height, as they then were; and, as the first witness tells you, there was a consideration, whether it should be at one place or at several places together. He says, then it was taken into consideration, that this could not be carried on but there must be arms and ammunition provided. The next step is about a necessary concern, the concern money, and therefore our law calls money 'the sinews of war.' My lord Howard tells you, that the duke of Monmouth proposed

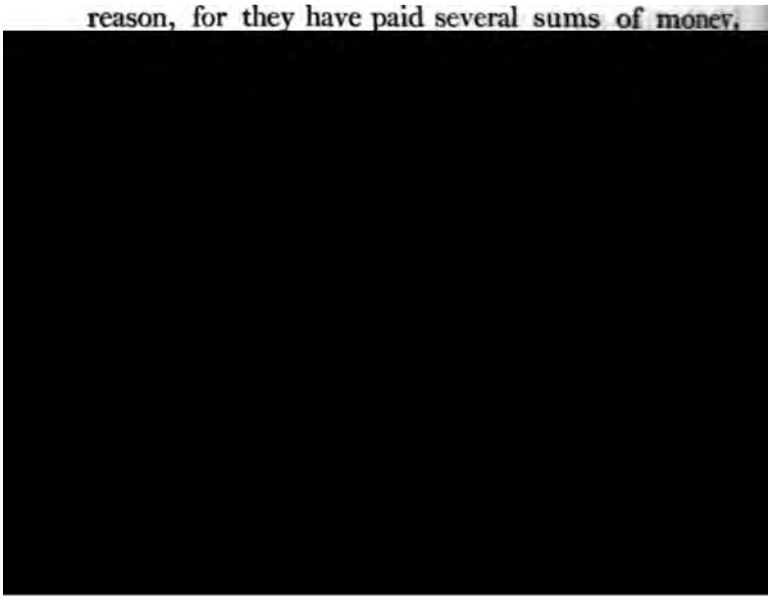
25 or 30,000l.; that my lord Grey was to advance 10,000l. out of his own estate: but then they thought to make their party more strong by the assistance of a discontented people in Scotland, my lord of Argyll and Sir John Cockram, and several other people there, to join with them; that, pursuant to this, they all after met at my lord Russel's; and the same debate is re-assumed, and among the rest, this particular thing of conciliating a friendship with the Scots; the Campbells, my lord of Argyll, and my lord Melvin were particularly mentioned: that Colonel Sydney took upon himself to find out a messenger, but it was my lord Russel's part to write the letter. One of the messengers named to convey the same was Aaron Smith; he was known, says my lord Howard, to some of us; and then we all agreed that Aaron Smith was the most proper man: upon this they brake up that very time. Afterwards comes my lord Howard to Colonel Sydney, at some distance of time, and he comes to him, and shews him threescore guineas, and told him, he was going into the city,

Andrew Foster informs you, how that Sir John Cockram and the Campbells, and one Monro, as I take it, came to town, and that he had discourse with some of them about their business of coming out of Scotland; and he says, they pretended it was about business of some trade to Carolina; which does still corroborate the evidence. He tells you likewise, that there being a noise of discovering the plot, they began to hide; Sir John Cockram began to hide, and skulk from place to place: they came first with that cant in their mouths about Carolina. The messenger, Atterbury, tells you, when they came to take these men, how they shuffled from place to place.

So, gentlemen, I must tell you, that in case there be but one witness to prove a direct treason, and another witness to a circumstance that contributes to that treason, that will make two witnesses to prove the treason. Because I would explain my mind: not long ago all the judges of England were commanded to meet together, and one that is the senior of the king's counsel was pleased to put this case: If I buy a knife of J. S. to kill the king, and it be proved by one witness I bought a knife for this purpose, and another comes and proves I bought such a knife of J. S. they are two witnesses sufficient to prove a man guilty of high treason: and so it was held by all the judges of England then present, in the presence of all the king's counsel. And therefore Mr. Sydney is mightily mistaken in the law: for in case of any treason (except the treason at the bar) or in treason

for clipping and coining, one witness is sufficient at this day.

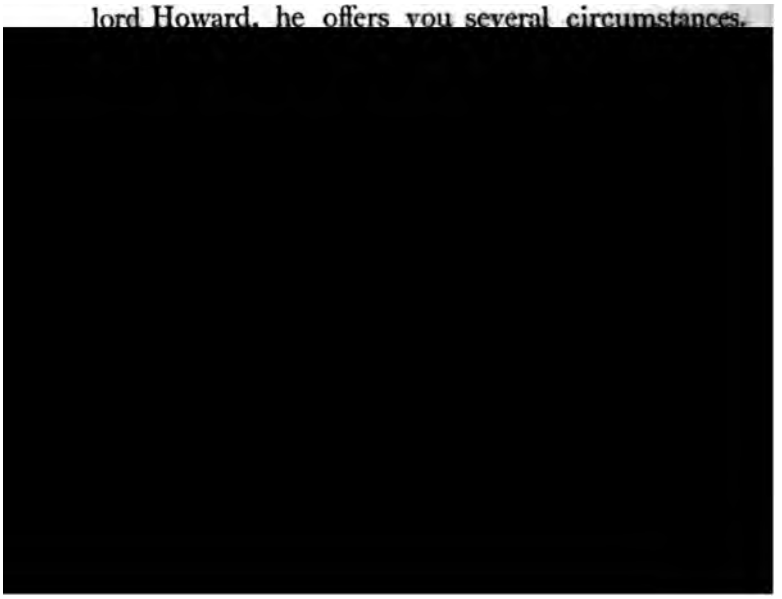
Now, gentlemen, supposing all this should not be sufficient, here is a libel, and it is a most traitorous and seditious libel. If you believe that that was Colonel Sydney's book, writ by him, no man can doubt but it is a sufficient evidence that he is guilty of compassing and imagining the death of the king; and let us consider what proof can be greater than what has been given of it. Mr. Sheppard, an intimate acquaintance of his, that has seen him write, he looks upon the hand, and says, he is extremely acquainted with the hand; and, says he, I believe in my conscience this book is Colonel Sydney's hand. Gentlemen, do you expect Mr. Sydney would call a witness to be by to see him write that book? In the next place, you have two tradesmen, Coke and Cary, and they tell you, one had seen him write once, the other had seen his hand-writing; and they have good reason, for they have paid several sums of money,



own seal, and carries them to Whitehall, where they were broken open: and swears that those papers were found in his closet, whereof this was one. Another thing which I must take notice of to you in this case is, to mind you, how this book contains all the malice, and revenge, and treason, that mankind can be guilty of: it fixes the sole power in the Parliament and the people; so that he carries on the design still, for their debates at their meetings were to that purpose. And such doctrines as these suit with their debates; for there a general insurrection was designed, and that was discoursed of in this book, and encouraged. They must not give it an ill name: it must not be called a rebellion, it being the general act of the people. The king, it says, is responsible to them, the king is but their trustee; that he had betrayed his trust, he had misgoverned, and now he is to give it up, that they may be all kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the misfortune of the late unhappy rebellion, and the bringing the late blessed king to the scaffold, was first begun by such kind of principles: they cried, he had betrayed the trust that was delegated to him from the people. Gentlemen, in the next place, because he is afraid their power alone won't do it, he endeavours to poison men's judgments; and the way he makes use of, he colours it with religion, and quotes scripture for it too; and you know how far that went in the late times; how we were for "binding our king in chains, and our nobles in fetters of iron." Gentlemen, this is likewise made

use of by him to stir up the people to rebellion. Gentlemen, if in case the prisoner did design the deposing the king, the removing the king, and if, in order thereunto, he be guilty of conspiring to levy war, or, as to the letter writ by my lord Russel, if he was privy to it, these will be evidences against him. So that 'tis not upon two, but 'tis upon greater evidence than twenty-two, if you believe this book was writ by him. Next I must tell you, gentlemen, upon, I think, a less testimony, an indictment was preferred against the late lord Russel, and he was thereupon convicted and executed; of which they have brought the record. These are the evidences for the king.

For the prisoner, he hath made several objections; as, that there was no war levied: for that, gentlemen, at the beginning of the cause, I told you what I took the law to be, and I take it to be so very plainly. But, gentlemen, as to the credibility of my lord Howard, he offers you several circumstances.

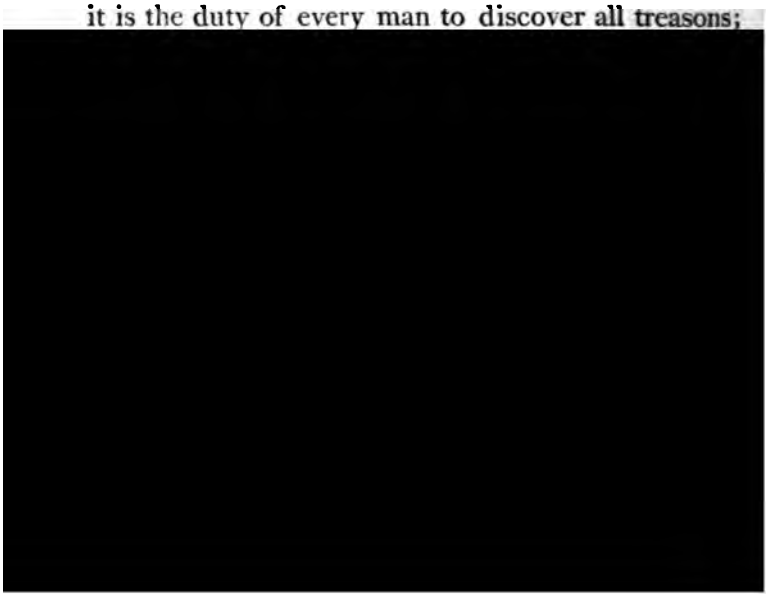


ness was done. Then Mr. Philip Howard, he tells you, how he was not so intimate with him as others, but he often came to his brother's; and that he should say, he knew nothing of a plot, nor did he believe any; but at the same time he said, he believed there was a sham plot: and then he pressed him about the business of the address; but that now my lord of Essex was out of town, and so it went off. Another thing Mr. Sydney took notice of; says he, 'Tis an act of revenge in my lord Howard, for he owes him a debt; that he does, besides by his allegation, does not appear.

Col. Sydney. My lord, he hath confessed it.

L. C. J. Admit it; yet in case Colonel Sydney should be convicted of this treason, the debt accrues to the king, and he can't be a farthing the better for it. But how does it look like revenge? I find my lord Howard, when he speaks of Colonel Sydney, says, he was more beholding to him than any body, and was more sorry for him; so says my lord Clare. Gentlemen, you have it likewise offered, that he came to Colonel Sydney's house, and there he was desirous to have the plate and goods removed to his house, and that he would assist them with his coach and coachman to carry them thither; and did affirm that he knew nothing of the plot; and did not believe Colonel Sydney knew any thing: and this is likewise proved by a couple of maid-servants, as well as the Frenchman; you have likewise something to the same purpose, said by my lord Paget: and this

is offered to take off the credibility of my lord Howard. Do you believe, because my lord Howard did not tell them, I am in a conspiracy to kill the king; therefore he knew nothing of it? He knew these persons were men of honour, and would not be concerned in any such thing. But do you think, because a man goes about and denies his being in a plot, therefore he was not in it? Nay, it seems so far from being an evidence of his innocence, that 'tis an evidence of his guilt. What should provoke a man to discourse after this manner, if he had not apprehensions of guilt within himself? This is the testimony offered against my lord Howard, in disparagement of his evidence. Ay, but further it is objected, he is in expectation of a pardon: and he did say, he thought he should not have the king's pardon, till such time as the drudgery of swearing was over. Why, gentlemen, I take notice, before this discourse happened, he swore the same thing at my lord Russel's trial. And I must tell you, though it is the duty of every man to discover all treasons;



that were not concerned in this plot, to prove that they were plotting? Ay, but, gentlemen, it is further objected, this hand looks like an old hand, and it may not be the prisoner's hand, but be counterfeited; and for that there is a gentlemen who tells you what a dextrous man he is. He says, he believes he could counterfeit any hand in half an hour: 'tis an ugly temptation, but I hope he hath more honour than to make use of that art he so much glories in. But what time could there be for the counterfeiting this book? Can you imagine that Sir Philip Lloyd, through the bag sealed up, did it? Or, who else, can you imagine should, or does the prisoner pretend did, write this book? So that on one side, God forbid but we should be careful of men's lives! so on the other side, God forbid that flourishes and varnish should come to endanger the life of the king, and the destruction of the government! But, gentlemen, we are not to anticipate you in point of fact: I have, according to my memory, recapitulated the matters given in evidence: it remains purely in you now, whether you do believe upon the whole matter, that the prisoner is guilty of the high treason whereof he is indicted.

Mr. Just. Wythins. Gentlemen, 'tis fit you should have our opinions: In all the points of law we concur with my lord chief justice....Says Colonel Sydney, Here is a mighty conspiracy, but there is nothing comes of it. Who must we thank for that? None but the Almighty Providence....One of themselves was troubled in conscience, and comes and

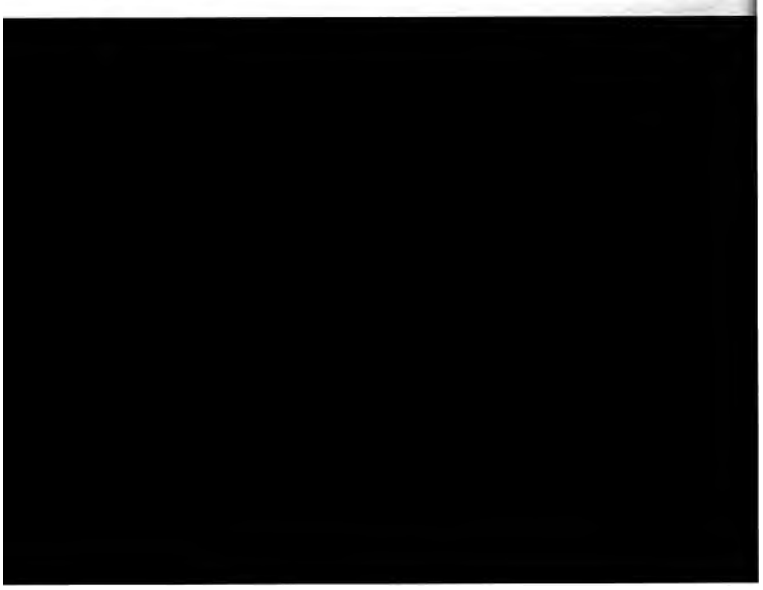
discovers it. Had not Keeling discovered it, God knows whether we might have been alive at this day. ....[*Then the jury withdrew, and in about half an hour's time returned, and brought the prisoner in* GUILTY....*And the lieutenant of the Tower took away his prisoner.*]

MONDAY, NOV. 26, 1683,

ALGERNON SYDNEY *was brought up to the bar of the court of king's-bench, to receive his sentence.*

L. C. J. Mr. Attorney, will you move any thing?

Mr. Att. Gen. My lord, the prisoner at the bar is convicted of high treason, I demand judgment against him.



do not find my country in the jury that did try me. There were some of them that were not freeholders. I think, my lord, there is neither law nor precedent of any man that has been tried by a jury, upon an indictment laid in a country, that were not freeholders. So I do humbly conceive that I have had no trial at all; and if I have had no trial, there can be no judgment.

L. C. J. Mr. Sydney, you had the opinion of the court in that matter before; we were unanimous in it, for it was the opinion of all the judges of England in the case next preceding yours, though that was a case relating to corporations; but they were of opinion, that by the statute of Queen Mary, the trial of treason was put as it was at common law, and that there was no such challenge at common law.

Col. Sydney. Under favour, my lord, I presume in such a case as this, of life, and for what I know, concerns every man in England, you will give me a day and counsel to argue it.

L. C. J. 'Tis not in the power of the court to do it.

Col. Sydney. My lord, I desire the indictment against me may be read.

L. C. J. To what purpose?

Col. Sydney. I have somewhat to say to it.

L. C. J. Well, read the indictment. [*Then the clerk of the crown read the indictment.*]

Col. Sydney. Pray, sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Col. Sydney. My lord, there is one thing then that makes this absolutely void; it deprives the king of his title, which is treason by law: *defensor fidei*, there is no such thing there, if I heard it right.

L. C. J. In that you would deprive the king of his life, that is in very full, I think.

Col. Sydney. If nobody would deprive the king, no more than I, he would be in no danger. Under favour, these are things not to be over-ruled in point of life, so easily.

that there is nothing of treason in them; besides that, there was nothing at all proved of them, only by similitude of hands, which, upon the case I alledged to your lordship, was not to be admitted in a criminal case. Now 'tis easy to call a thing proditory; but yet let the nature of the thing be examined; I put myself upon it, that there is no treason in it.

L. C. J. There is not a line in the book scarce, but what is treason.

Mr. Just. Wythins. I believe, you don't believe it treason.

L. C. J. That is the worst part of your case: when men are riveted in opinion that kings may be deposed, that they are accountable to their people, that a general insurrection is no rebellion, and justify it, 'tis high time, upon my word, to call them to account.

Col. Sydney. My lord, the other day I had a book, wherein I had King James' speech, upon which all that is there, is grounded in his own speech to the Parliament in 1603; and there is nothing in these papers, which is called a book, though it never appeared; for if it were true, it was only papers found in a private man's study, never shewed to any body; and Mr. Attorney takes this to bring it to a crime, in order to some other counsel; and this was to come out such a time when the insurrection brake out. My lord, there is one person I did not know

where to find then, but every body knows where to find now, that is the duke of Monmouth: if there had been any thing in consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in prosecution of those designs of his: and if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were tried for this fact: we must not send for the duke of Monmouth.

Col. Sydney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Col. Sydney. If you will call it a trial.....

L. C. J. I do: the law calls it so.

.. C. J That can't be.

'ol. Sydney. Be the trial what it will?

'lerk of the Crown. Cryer, make an *O yes.*

'ol. Sydney. Can't I be heard, my lord?

.. C. J. Yes, if you will speak that which is ıer. 'Tis a strange thing, you seem to appeal ' you had some great hardship put upon you. I ıure, I can as well appeal as you. I am sure you all the favour shewed you, that ever any prisoner

The court heard you with patience, when you :e what was proper; but if you begin to arraign justice of the nation, it concerns the justice of nation to prevent you; we are bound by our ıciences and our oaths to see right done you; and gh we are judges upon earth, we are accountable ıe judge of heaven and earth; and we act accord- to our consciences, though we don't act accord- to your opinion.

ol. Sydney. My lord, I say, in the first place, s brought to Westminster by *habeas corpus*, 7th of this month, granted the day before, to be gned, when yet no bill was exhibited against me; my prosecutors could not know it would be d, unless they had a correspondence with the d jury; which, under favour, ought not to have ı had.

L. C. J. We know nothing of it: you had as good tell us of somebody's ghost, as you did at the trial.

Col. Sydney. I told you of two infamous persons that acted my lord Russel's ghost.

L. C. J. Go on, if you have any thing else.

Col. Sydney. I prayed a copy of the indictment, making my objections against it, and putting in a special plea, which the law, I humbly conceive, allowed me: the help of counsel to frame it was denied.

L. C. J. For the copy of the indictment, it was denied in the case you cited. This favour shewed you to-day, was denied at any time to Sir Henry Vane, that is, to have the indictment read in Latin. Don't say on the other side, we refused your plea. I told you, have a care of putting it in. If the plea was such as Mr. Attorney did demur to it, I told you,

at danger you would fall under, if it were not plea.

Sydney. My lord, my plea was, that could urt me.

J. We did not know that.

Sydney. I desire, my lord, this, that it may sidered, that, being brought here to my trial, desire a copy of my indictment, upon the of 46 E. 3. which does allow it to all men in s.

J. I tell you, the law is otherwise, and u so then, and tell you so now.

Sydney. Your lordship did not tell me, that t a law.

J. Unless there be a law particular for Co- ydney. If you have any more to say....

Sydney. I am probably informed, and, if ordship will give me time, shall be able to t, that the jury was not summoned as it ought my lord, if this jury was not summoned by liff, according to the ordinary way, but they greed upon by the under-sheriffs, Graham and , I desire to know, whether that be a good

L. C. J. We can take notice of nothing but what is upon the record. Here is a return by the sheriff, if there had been any indirect means used with the sheriff, or any else, you should have mentioned it before they were sworn.

Col. Sydney. Is there any thing in the world more irregular than that?

L. C. J. I know nothing of it: that time is past.

Col. Sydney. Now, my lord, all men are admitted on the jury.

L. C. J. Why, you did not like gentlemen, and and now you don't like those that you had. In plain English, if any jury had found you guilty, it had been the same thing. It had been a good summons, if they had acquitted you.

Col. Sydney. When the jury thus returned

Col. Sydney. My lord Howard being the only witness that said any thing against me; papers, which were said to be found in my house, were produced as another witness, and no other testimony given concerning them, but that the hand was like unto mine. No man can say, I read them or shewed them to any man. None knew when they were written; the ink shewed they had been done many, and perhaps twenty or thirty years; yea, some passages were read out of them, without examining what went before and after. When I desired the whole might be read, it was refused, unless I specified the passage, which I could not do, knowing not one word in them. When I alledged, that in criminal cases similitude of hands could not be taken for evidence, proposed my points of law concerning constructive treason, &c. and I did conceive, that no court under the Parliament could be judges of it, and did desire the statute, which did so enact it, might be read, it could not be obtained: and I cited many judgments in Parliament.

L. C. J. Mr. Sydney, if you arraign the justice of the nation so, as though we had denied you the methods of justice, I must tell you, you do what does not become you; for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our duty. What points of law do you mean?

Col. Sydney. That of constructive treason, my lord.

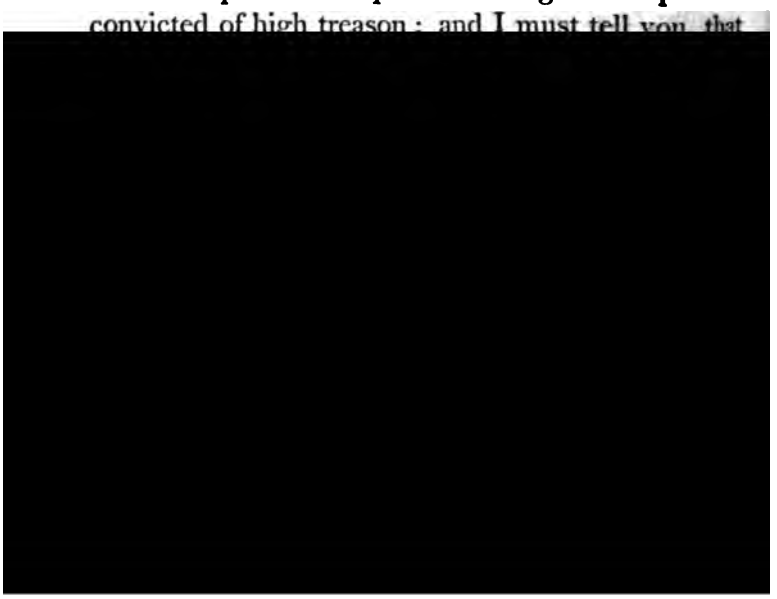
L. C. J. We do not go upon constructive treason, 'tis plain treason within 25 E. 3.

Col. Sydney. Is writing an act?

L. C. J. Yes, 'tis *agere.* [*Proclamation made for silence.*]

Mr. Bamfield. Sir, I pray you to hear me one word as *amicus curiæ.* I humbly suppose that your lordship will not give judgment if there be a material defect in the indictment: as the clerk did read it, he left out *defensor fidei*, which is part of the style of his majesty.

L. C. J. We have heard of it already; we thank you for your friendship, and are satisfied. Mr. Sydney, there remains nothing for the court, but to discharge their duty, in pronouncing that judgment the law requires to be pronounced against all persons convicted of high treason: and I must tell you that



have contracted by the great offence you have committed. I wish with all my heart, you would consider your condition; but if your own ingenuity will not provoke you, nothing I can say will prevail with you to do it: if the king's general pardon, in which you had so great a share of the king's mercy, will not, I could wish that as a gentleman and as a christian, you would consider under what particular obligations you lie to that gracious king that hath done much more for you. I should have thought it would have wrought in you such a temper of mind, as to have turned the rest of your life into a generous acknowledgment of his bounty and mercy, and not into a state of constant combining and writing, not only to destroy him, but to subvert the government; and I am sorry to see you so earnest in the justification of the book, in which there is scarce a line but what contains the rankest treason, such as deposing the king: it not only encourages, but justifies all rebellion. Mr. Sydney, you are a gentleman of quality, and need no counsel from me: if I could give you any, my charity to your immortal soul would provoke me to it. I pray, God season this affliction to you! There remains nothing with the court, but to pronounce that judgment that is expected, and the law requires, and therefore the judgment of the court is....

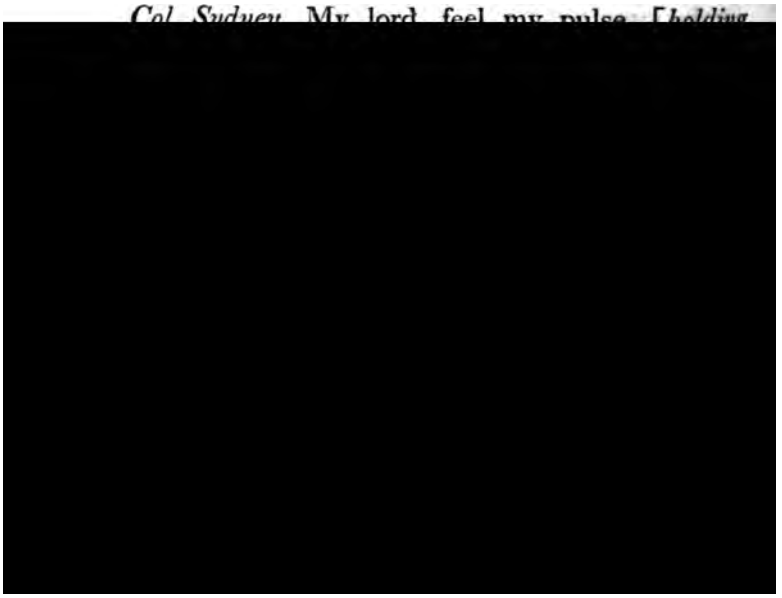
That you be carried hence to the place from whence you came, and from thence you shall be drawn upon an hurdle to the place of execution, where you shall be hanged by the neck, and, being alive, cut down;

your privy members shall be cut off, and burned before your face; your head severed from your body, and your body divided into four quarters; and they to be disposed at the pleasure of the king. And the God of infinite mercy have mercy upon your soul!

Col. Sydney.. Then, O God, O God, I beseech thee to sanctifiy these sufferings unto me, and impute not my blood to the country, nor the city through which I am to be drawn; let no inquisition be made for it; but if any, and the shedding of blood that is innocent must be revenged, let the weight of it fall upon those that maliciously persecute me for righteousness' sake.

L. C. J. I pray God work in you a temper fit to go into the other world, for I see you are not fit for this.

Col. Sydney. My lord, feel my pulse. [holding



The Apology*

OF

ALGERNON SYDNEY,

IN THE DAY OF HIS DEATH.

BEING ready to dye under an accusation of many crimes, I thought fit to leaue this as a testimony unto the world, that, as I had from my youth endeauoured to uphold the common rights of mankind, the lawes of this land, and the Protestant religion, against corrupt principles, arbitrary power, and Popery, I doe now willingly lay downe my life for the same; and having a sure witnesse within me, that God doth absolue me, and uphold me in the utmost extremetyes, am uery littell sollicitous, though man doth condemne me.

I am noe wayes ashamed to anote, that from the yeare 1642, untill the coming in of the king, I did prosecute the above-mentioned principles; and hau-

* The reader will find a difficulty in understanding some words and passages in this Apology, which, it is not improbable, was dictated to a Frenchman, Joseph Ducas, the same who gave evidence on the trial.

ing then finished, to the aduantage of all Europe and the honour of this nation, a negociation, upon which I had been employed in the north, chose rather to remaine beyond the seas, than to returne into my owne country, though General Monk, upon account of many obligations receaued from me, did desire me to returne, with large offers of all aduantages he could procure for me.

I well knew his power, and did not doubt of his intentions: but though I thought it my duty to submit unto the prouidence of God, in the strange reuolutions brought amongst us, through the unsearchable councels of his will, durst not recead from the ways of righteousnesse; and through his grace was enabled to reject the rewards of iniquity.

It being acknowledged, that though I had euer opposed the then triumphing party, noe man had euer shewed himself to be a fairer enemy, and that I had done many personall and most important servi-

hauiour could preserue me against the malice of thoes who sought to destroy me; and was deffended from such as there designed to assassinate me, only by the charity of strangers.

When the care of my priuate affaires brought me into Flanders and Holland, *anno* 1663, the same dangers accompanied me; and, that no place might be safe unto me, Andrew White, with some others, were sent into the most remote parts of Germany, to murther me.

The asperity of this persecution obliged me to seek the protection of somme forraine princes; and being then in the strength of my age, had reputation enough to haue gained honourable imployments; but all my designes were broken by letters and messages from this court, so as none durst entertaine me; and when I could not comprehend the grounds of dealing with me in such a way, when I knew that many others, whoe had been my compaignons, and given (as I thought) more just causes of hatred against them than I had done, were receaued into fauour, or suffer'd to liue quietly. A man of quality, whoe well knew the temper of the court, explained the mistery unto me, by letting me know, that I was distinguished from the rest, because it was knowne that I could not be corrupted.

Noe man could have thought it strange, if this has cast me into the utmost extreamityes; and perhaps occasions of being reuenged would not have been

wanting, if I had sought them; but, instead of that, I cast myself into unsuspected retirement in the most remote parts of France, where I passed aboue eleuen yeares, and was drawne out of it only by a desire of seing my aged father before he died, and obtained the king's passeport for my security.

My father dyed within a few weeks after my cumming ouer; and, when I prepared myself to returne into Guascony, there to passe the remaining part of my life, I was hindered by the earl of Leicester, my brother, who questioned all that my father had giuen me for my subsistance; and by a long and tedious suitte in shancery, detained me in England, untill I was made a prisoner.

When a fauourable decree, obtained in shancery, gave me hopes of being freed from such uexatious businesse, I reassumed my former designe of returning into France; and to that end bought a small par-

I did truly shew unto him, that there neither was nor could be any thing of that nature, as things then stood; because it would cast his majestye into conjunction with the Popish, which they did most abhorre; the sham was continued, as appears by the mealetub businesse. Though my name was not there found, I am well informed, that, if it had succeeded, I should haue been inuolued in it.

Other wayes were invented to uex and ruine me. When I only looked ouer a balcony to see what passed at the election of the sheriffs of London, I was indicted for a riot.

In April last, I was told by a person of eminent quality, uirtue, and understanding, that I should infaillibly be made a prisoner. I asked upon what pretence. He alleagued somme things that were entirely friuolous, relating unto vile persons, whoes façes and names I did not know, but concluded somme or other would be found; and that if I was once taken it mattered not for what cause; it being impossible to auoide condemnation, before such judges and juryes as I should be tryed by.

About the middell of June, the towne was full of rumours of a plot sayd to be discouered by Keeling, and not long after by West. Some persons fled, and a proclamation issued to haue them apprehended. My name was in every coffee-house, and seueral informations were given me, that I should certainely

be seased. I mentioned this to seuerall persons; but knowing no raison why I should absent myself, resolued not to do it; and continued in that minde, though I was told, earely in the morning on the 26th of June, that the duke of Monmouth was retired, and colonel Rumsey had rendered himself.

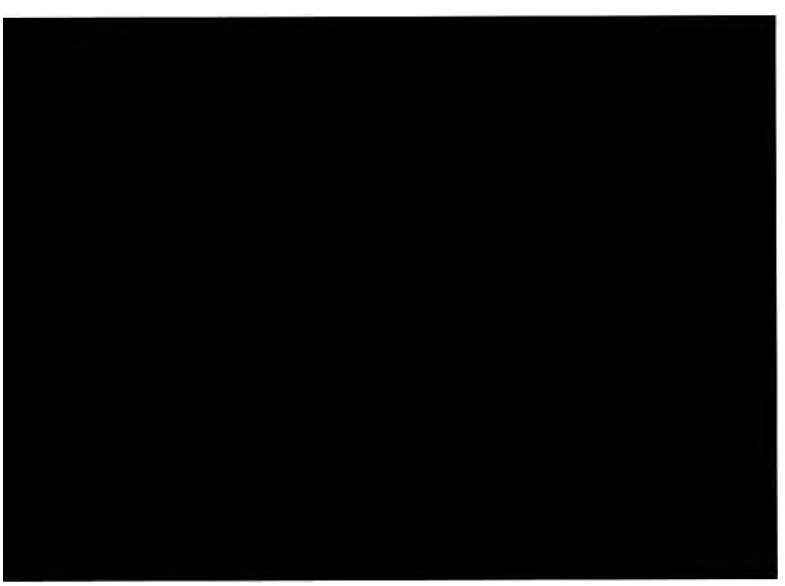
This concerned me soe littell, that I spent that morning upon my usuall studyes, or entertaining such friends as came to see me; and, whilest I was at dinner, a messenger came and arrested me in the king's name, by an order from four lords of the privy councell. Immediately after, Sir Philip Lloyd came with another order from the same lords, to sease my papers. He searched many secret places, but did not find one that he thought fit to take, except such as lay openly upon my table, or in a trunck that had not been shut in somme yeares. When he had ransaked all, and put what he pleased into a trunk and pillowbear, he would haue persuaded me to put my seale unto them; but I, remembring what had passed

The lord keeper [North] asked me some questions concerning Sir John Cockram, and Aaron Smyth, unto which I returned answeares with all the respect I could, without preiudice unto the truth; and, when I thought I had giuen full satisfaction, was taken into the custody of a serieant at armes, and, by a warrant from * Sir Leolin Jenkins, [secretary of state] committed to the Tower for high treason, and there detained a close prisoner. Within a few days after, my house, mony, horses, goods, and chattels, were seased both in the towne and country, which I take to be contrary to the lawes of the land, in thees three points: first, it is expressely sayd in *magna charta*, confirmed by above thirty Parliaments, and many other statutes now in force, that noe man shall be imprisoned, unlesse it be by the judgment of his peeres, upon the testimony of tow credible witnesses,

* *Hithe.* Sir Leolin Jenkins, son of a taylour, judge of the admiralty, was in hopes to be archbishop of Canterbury; employed in four embassies, and whose indefatigable industry in promoting a peace for France, has been our . . . . .; (curse or ruin.) He affirmed in the House of Commons, That upon necessity, the King might raise monies without act of Parliament.

A seasonable argument to persuade all the grand juries in England, to petition for a new Parliament. Or a list of the principal labourers in the great design of Popery and arbitrary power; who have betrayed their country to the conspirators, and bargained with them to maintain a standing army in England, under the command of the bigotted Popish duke, who by the assistance of the L. L's. (lord lieutenant's) Scotch army, the forces in Ireland, and those in France, hope to bring all back to Rome. Amsterdam, printed in the year 1677, in quarto. (By Andrew Marvell.)

or his own free confession, without force or violence; whereas here was no indictment or witnesse produced untill the 7 of Nov. and, though extreame violence was used to me, I confessed noe crime at all. 2dly, The law of England appoints imprisonment "*in custodiam*, not *in pœnam*," acknowledges no close imprisonment; whereas I was kept with the most extreame rigour, to the great preiudice of my health, and almost destruction of my life, without any consolation from my friends, untill a few dayes before my tryall. 3dly, The law of England admits of no seissure of goods till after conviction; whereas diuers lewd fellowes were put into my house, whoe, besides many insolencies committed, did (as I am informed) feloniously take away my coaches, several parcells of goods, and somme mony, long before any indictement was exhibited against me, and though I made seueral addresses unto the king and councell, for the remouall of thoes violences, could obtaine noe reliefe.



The bill being found, I was immediately hurried to the bar, through a strong guard of soldiers, to be arraigned. The bill was read in English and in Latin. I found it to be very long, perplexed, confused, and containing a heap of crimes, distinct in nature, distinguished from each other by lawes relating unto seueral statutes, which required seuerall considerations; noe ouert act was precisely set forth, with its due circumstances; noe man named, with whome I was sayd to haue conspired; the meetings to conspire were sayd to be on the 30th of June, and many other dayes both before and since; whereas I was then, and had bin somme dayes before, and ever since, a close prisoner: hereupon I desired the aduice of councell, to frame exceptions against the bill, professing that to me it seemed to be voide, as many had been declared to be soe, and particularly that of the duke of Somerset. I instanced, that the court had allowed unto Sir H. Vane the liberty of making his exceptions, and pleading over, which the lawes allowe in matters of life; but all was refused, without any other reason then the will of the judges. I then desired councell to frame a speciall plea, opening, as well as I could, the scope of it; but could obtaine nothing: and lastly, when I offered a speciall plea, ready engrossed, the court would not receaue it, unlesse it might be peremptory, declaring, that if it were ouer-ruled, I should be noe further heard; which condition I was not willing to accept of, inasmuch as, though I belieued my plea to be good, I was more confident of the merits of my cause; and, least I should be depriued of the benefit of pleading, was forced to comme to the general issue.

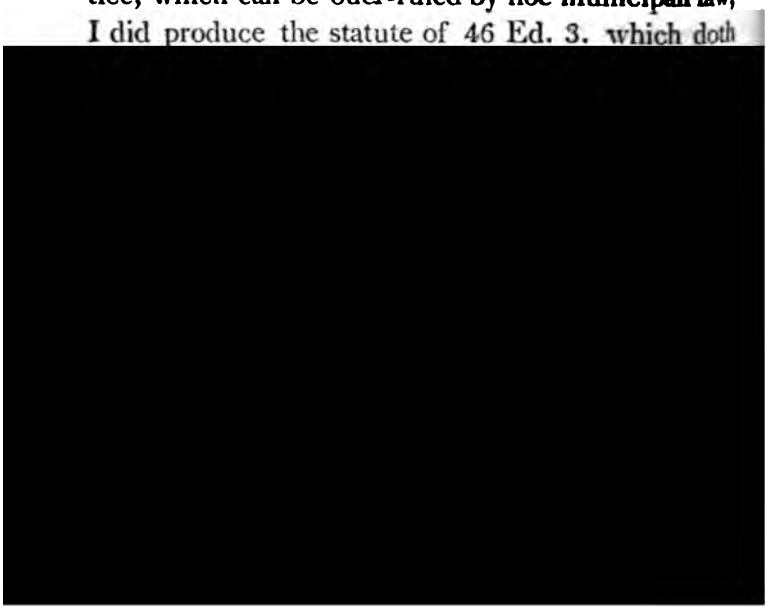
This proceeded meerely from my own ignorance in the lawe, and want of councell, which if I had had, the court could not have imposed so notorious a fraud upon me, as to make me belieue, that I could not be admitted to plead not guilty, if that speciall plea came to be ouer-ruled; euery one that is any wayes versed in the lawe knowing, that I might doe it without danger. If it had bin receaued, the court would haue bin obliged to cut off those intricacyes, ambiguityes, by which I was entangled, and the jury brought to bring in a verdict which they did understand: or impudently, in the face of the world, to haue showne, that they had noe consideration of lawe or common sense: and whatsoeuer they did, might then haue comme to the generall issue. Being driuen upon these extremityes, by the uiolence and fraude of the chief justice, whoe threatened, that judgement of treason should be immediately entered if I did not comme to the generall issue, I was forced to plead not guilty, and theareby lost the aduantage, which was neuer to be recouered, unlesse the judges

errours of the indictment should be discouered, as that time might be of any benefite unto me, the coppy of it, and the help of councell, were again denyed, unlesse I could tell upon what points in lawe I would desire their aduice.

This was noe lesse then to inioine imposibilityes. Having neuer studdyed the lawe, I was utterly ignorant of it; the indictment was soe long, perplexed, and intricate, that the ablest lawyers could giue me but a very imperfect account of it upon hearing, though the wholle contexture of it seemed to be such as was not to be upheld by lawe; it was hard for them justly to fixe upon the wayes of overthrowing it, when the exceptions, and the speciall plea that I offered, had bin rejected, unlesse they had it before them, and nicely examined it: much lesse could it be done by me, whoe am utterly unexperienced in thoes matters. * Mr. Atturney [Sir Robert Sawyer, knt.] had then so much confidence, and soe littell charity, as openly to auow, that I should not haue councell, lest they should furnish or teach me the points of lawe that I might insist upon. This appeared strange unto all thoes whoe haue any knowledge of the lawes of God or man, and that are not equally depriued of charity and humanity. The obtaining of justice is the end of the lawe, and truth the rule of

* *Chipping Wicham.* Sir Robert Sawyer, a lawyer of as ill reputation as his father. Has had for his attendance this session, 1000l. and is promised, as he insinuates, to be attorney-general and speaker of the House of Commons. A seasonable argument, &c.

it; hereupon it is agreed by mankinde, that every man ought to know his accusation, that he may know to direct his deffence, or receaue aduice, if he be not ignorant in it. It is an absurd peruersion of all lawe, to say, that I heard it read; when it was rendered soe long and intricate, that neither I, nor any other man was, upon reading, able to comprehend it. One of the worst acts that were imputed unto Caligula, the worst and basest of men, was, that he caused edicts to be written in a hand, and set up in a place where no man could read them: hereby he turned the law into a snare, and destroyed thoes whoe did not conforme themselues unto the rule they neuer knew. They fall under the same condemnation, whoe make accusations obscure, and suffer them not to be examined, least they should be understood. To cuade this, my prosecutors falsely pretend, that noe such priuilege is allowed to prisoners in England. But, besides that naturall and universal rule of justice, which can be ouer-ruled by noe municipall law, I did produce the statute of 46 Ed. 3. which doth



doe not find, that our ancestors were lesse carefull of the liues of commoners, then of peeres, or that one lawe is made for them, and another for us; but are all entirely under the same lawe, and the same rules.

I confess that, at the time of my arraignment, I was not fully prouided with arguments and proofes of these matters; but when I came to my tryall, had thoes that were abundantly sufficient: neuerthelesse the chief justice (whoe, by his oath, and the king's, ought to haue informed me of that lawe, if I did not know it) would not suffer the statute to be read, when I produced an authentike coppy of it, nor allowe me the coppy of my indictement, which, according unto the true meaning and expresse words thereof, I demanded.

Though I was thus irregularly hurried unto tryall, I thought that my birth, education, and life, might haue deserued a jury of the principal knights and gentlemen that were freeholders in Middlesex; or, if that rule were broken, the most eminent men for quality and understanding, reputation and uirtue, whoe liued in the county, though they had not freeholds, might haue bin taken to fill up the pannell. The importance and difficulty of the matter in question seemed farther to enforce it; but when a coppy of the pannell was sent unto me, I found that all rules of decency, discretion, and humanity, had bin neglected, as well as thoes of lawe: the bailifes had not bin suffered to summon such of the freeholders, in

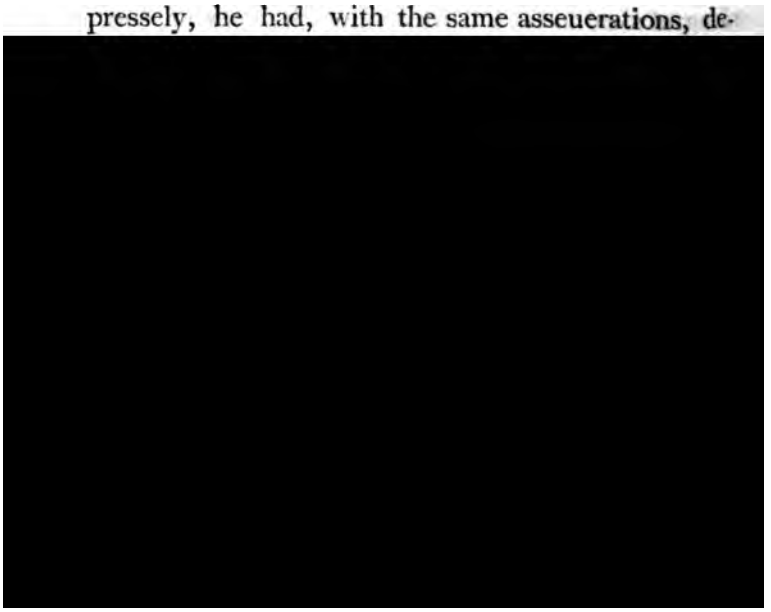
their seuerall hundreds, as seemed most fit for such a seruice. but receiued orders to summon by name such as Graham and Burton had, with the under-sheriff, agreed upon: the coppy of the pannell was sent into me before one of them was summoned; and, if I am rightly informed, somme of the best being put in only for fashion-sake, did neuer receaue any summons. but sure I am they did not appeare.

The life I haue led might haue giuen me somme kinde of knowledge of such as reasonably might be thought fit to be my judges: but I did not know the face of one, nor the names of more than three of the whoile pannell, and they last, as did not appeare. Upon examination I found, that they had not only put in very many that were not freeholders, but picked up a riddle of men of the meanest callings, ruined fortunes, lost reputation, and hardly endowed with such understanding as is required for a jury in a wise privat court, for a businesse of fiue pounds.

admit of others most like unto them (whereas it is sayed, that I reiected men of quality, and took such as were mean, I doe professe, that I doe not know of a man, family, name, or fortune, upon the pannell, but Mr. Burt, Sir Charles Gerard, and Mr. Hawtry, whome I resolued to haue accepted; and if I did challange any other like unto them, it was meerely by mistake); and, to embroile the minds of a jury thus constituted, the king's councell produced Mr. West, colonel Rumsey, Keeling, and Sir Andrew Foster, to tell storyes upon hearsay. The three first spake of a plot betweene themselues and others, in which I was no more concerned, then that they, whoe had not reputation to carry on such a work, were willing to make people belieue, that I, and somme that had more, were engaged in it. This, in truth, did uery much tend to my justification; for it is not to be imagined, that, if I had bin engaged in their designes, I should not rather haue communicated with West and Rumsey, then such meane persons, as were hardly in a distance of being knowne by me: and Foster's deposition went noe further, then that, as the lord Howard sayd somme Scotch gentlemen were desired to comme up upon a pretence of treating concerning Carolina, somme did comme to treat of the same; but of me, or any correspondence between me and them, he says not a word. The lord Howard's deposition was uery rhetoricall, but nothing at all to the present purpose. The indictment set forth a conspiracy on the 30th June, wherein I, and diuers others to the jury unknowne, did then, and many other days both before

and after, in the parish of St. Giles, not hauing the fear of God before our eyes, at the instigation of the diuell, had traiterously conspired the king to depose and kill; the gouernment to subuert; to leauy war, and a cruel slaughter of his subjects to make; and, in order heareunto, had written a false and seditious libell or book to stirre up the people.

The witnesses produced by me were three eminent peeres, tow gentelmen of great quality, cousin germains of the lord Howard, a doctor of diuinity, a Frensh gentelman, tow of my seruants, and a verry considerable citizen. Six of these did depose, that the lord Howard, with hands and eyes lifted up to heauen, and calling God to witnesse, had most sollemly declared he knew of noe plot; belieued there was none; took that which is mentioned, to be a sham inuented by the priests and Jesuits, and the more dangerous for being a sham, because noe man knew where it would end. Four of them sayd expressely, he had, with the same asseuerations, de-



time of breaking of my discourse, as neuer to suffer me to finish any point that pinshed too hard upon the undue practices of my prosecutors, or most conduced to my deffence. Whensoeuer I cited a lawe, or a judged case, that made for me, or proposed a point of lawe to be argued or reserued, he would tell me it was nothing to the purpose, they had already determined it, and obliged me to be silent. Then I thereupon sayd, it was to noe purpose to speak, if law, reason, and truth were not regarded. He told me, that if I would not speak, they knew how to proceed.

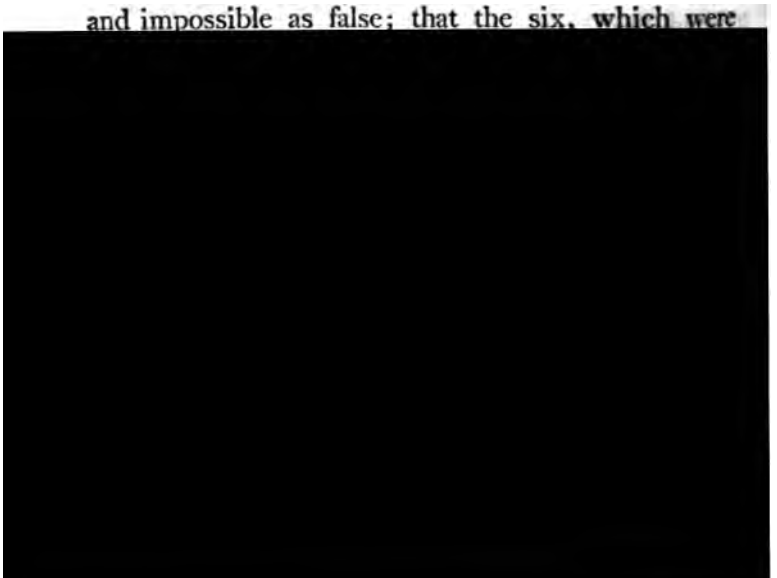
When, by the impudence of his extrauagance, I was driuen into theis streights, I saw noe better way then to shewe, that the only witnesse against me was the lord Howard; and he could deserue noe credite; that hauing, at the lord Russell's triall, acknowledged, that the religious obligation of an oath did not consist in the outward administring of it, but the calling of God to be a witnesse unto it; that he had there, as in the presence of God, asserted things inconsistent with what he had then sworne (soe as Mr. Howard sayd it was impossible that what he sayd unto him, and what he had then sworne in the court, could be true, unlesse his lordship had one soul on Sunday, and another on Monday); that he had thereby sworne himself periured, which was beyond any legall conuiction, and ought to destroy his testimony, as well as if he had been legally conuicted.

That he had now added new periuries unto the

former, in swearing things different from, and inconsistent with, what he had sworne against the lord Russell; and then concluded that he knew no more.

That, being under the guilt of many confessed crimes, the terrours of death, the despaire of obtaining a pardon, unlesse it were by the drudgery of swearing, as was testified by Mr. Blake, or doing other jobs, as had bin sayd by Hunt and Burroughs, whoe durst not appear, though subpœnas had been sent them; he did in effect confesse his former crimes were to be redcemed only by committing more; he ought not to be credited; that he was my debtor; and, having defrauded me in the matter, and for the money, with which I had trusted him, comming to my house under the name of a friend, he had endeavourcd to get my plate and other things of ualue into his hands.

That the matter of his deposition was as absurd and impossible as false; that the six, which were

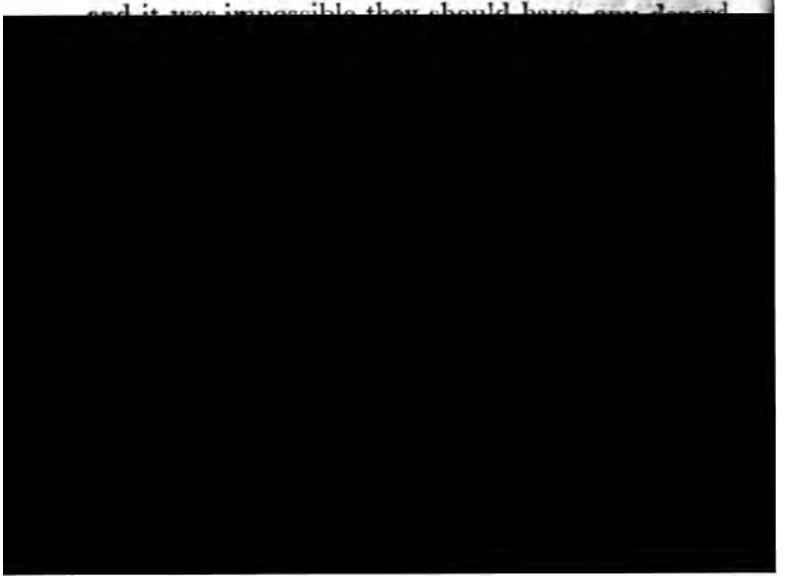


as they trusted, and could help forwards the designes for which they did conspire; that the lord Howard was trusted by none of them, and was soe far from being able to doe any thing towards such an end, that he durst not say he could bring fiue men into the field, furnish fiue pounds by his purse or credite, or knew how to command them if they were brought together by any other; that, if he said the same thing of me, I might confesse it; and did confesse, I did not know fiue men in England that would followe me; and could haue said uery much more, if I had not bin hindered by the chief justice, his frequent interruptions.

That, his deposition being destroyed, nothing remained; or though contrary to lawe and reason it were receaued, it could be of no ualue, *being single.*

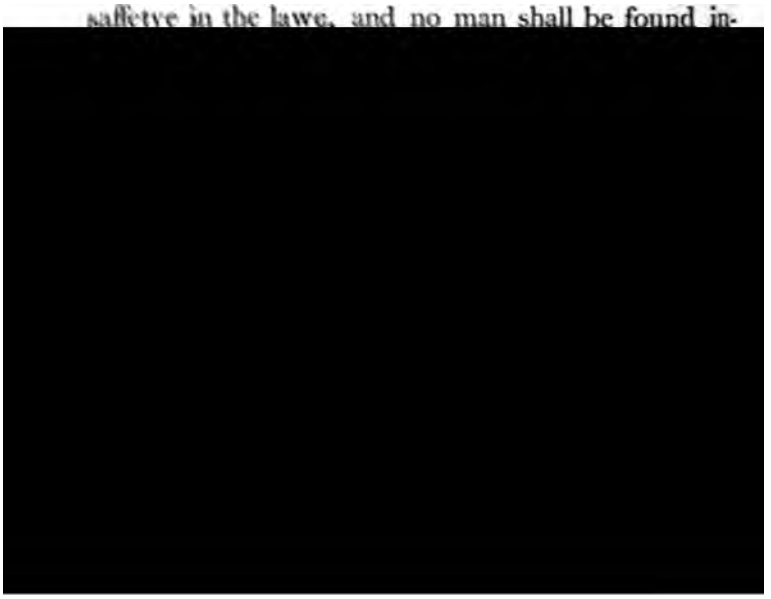
That no use could be made of the papers sayd to be found in my house. That, though the gouernement of France is sayd to be uiolent, noe use could be made of many papers of most dangerous consequence, sayd to be taken in M. de Fouquet's house, by the king of France, his officers; and the error of not inuentorying them, in the presence of somme persons trusted by him, was neuer to be repaired, and he had been saved by it. That noe man said I writ them, and similitude of writing, in criminal cases, could be no euidence, as appeared by the judgment of the chief justice Keeling, and the whole court, in the lady Car's case.

That, whosoever writ them, they appeared to be only somme scraps of a long treatise, in answere to Flimer's book, which, being full of abominable maxims, might be opposed by any man: the like having bin written by one White, a priest, in favour of Cromwell, when he was in possession of the power; he, though a tyrant, abominated it, and a gentleman who presented it; that if I had written and published a book, I must be answerable for the contents of it, the wholle being considered; but when a few sheets, relating unto somme hundreds mentioned in them, were produced, not only the scope of the wholle remained unknowne, but the antecedants and consequents of the words they had read, being kept secrets, noe man could say whether this work were good or euil, true or false; that when I desired thoes papers brought into the court should all be read, it was absurdly proposed that I should name the passage, I not knowing any word that was in them: that the ink and paper did euidently shew they were very old,



there professed, when I liued under it; and, though it raged in Spain more then any other place, noe monk could be questioned for any such writings, though they contained the most dangerous heresyes, if not published; and it was enough for him that had written them, to say, that he was perhaps mistaken. This being soe, there is neither matter nor euidence; the lord Howard's testimony is nothing in itself, and cannot be supplyed by that which is also nothing, or, if it were to be receaued by itself, could have noe relation to the consults of which he accuseth me. I must euer insist upon the lawe of God giuen by the hand of Moses, confirmed by Christ and his apostles, wheareby tow witnesses are necessarily required, to euery word, and euery matter. This is receaued by all that professe the name of Christ, and soe understood by all, that noe man in any place can be put to death, unless tow or more testify the same word or thing. The reason of this is not because tow or more euill men may not be found, as appeares by the story of Susanna; but because it is hard for tow or more soe to agree upon all circumstances relating unto a lye, as not to thwart one another: and whosoeuer admits of tow testifying seueral things done or sayd at seueral times or places, conducing, as is said of late, unto the same ends, destroyes the reason of that lawe, takes away all the deffence that the most innocent men can haue for their liues, and opens a wide gate for perjury, by taking away all possibility of discouering it. This would be far more mischieuous in England, where there is noe law of retaliation, then other countryes,

where a false witnesse undergoes the same punishment as should haue bin inflicted upon the accused person, if his words had bin found true; but the lawe of England doth require tow witnesses unto the same thing, in the statute E. 6. whereby compassing, by expresse words, to depose the king, is made penal by forfeiture of goods, &c. and the statute 3 Ed. 2. and 13 Car. 22. enacting, that conspiring to leuy war should be treason, necessarily required tow witnesses for the proofe of it. The admission of tow testifying things passing at seuerall times and places, is but a new inuention. The lords were brought to swallow it at the lord Stafford's tryal, by the perfect concurrence of the testimonyes of Turnile and Bugdale, in the same thing, vid. murthering the king, though the one was in France, the other in Staffordshire; but if that, which was then perhaps too farre strained, be carried so much farther, as to extend to any thing that these gentlemen shall fancy may conduce unto the same end, there is no saffetye in the lawe, and no man shall be found in-



not a man to have any such designe; and I am no more capable of it then of eating him, if he were leath [dead]. *I think I may say, I did once save his life, but I am sure I never endeauoured to take it away.* If the meetings mentioned were to be taken for conspiracyes against his majestye's life, something must haue been there proposed and resolued concerning the wayes, manner, time, place, or persons, by whome it should be effected; of which not one word is pretended, or that he was soe much as named.

That conspiracyes take their denomination from the thing that the conspirators endeauoured to compasse; and no men were euer sayd to conspire to do that which was neuer spoken of amongst them.

That the compassing of the king's death, declared to be treason in the first bransh of the statute of 25 E. 3. was meant his corporall death, inasmuch as, in his politike capacity, he can neuer dye; and cannot be implyed by the bransh relating unto the leuying of war, which is an act distinct in nature and distinguished by lawe from it: the authorityes of Cook and Hale, were alleaged to proue this distinction, that to leuy war was not to compass the death of the king; and, being treason of different species, the ouert act of the one could not be the ouert act of the other: that conspiring to leuy war, was not treason of itself, nor by implication, as appeared by seuerall temporary acts of the 1 of Mar. 13 El. 13 Car. 2. and others, whereby, after a certaine time during their

liues, to conspire to leuy war is made treason, which had bin impertinent, if it had been euer soe by the antient statute of 25 E. 3.

The case of Sir H. Vane was alleaged, who, though he had bin an eminent man in all the councells relating unto the first war, by which the late king was brought to death, it was neuer imputed unto him, because euery man knew he had noe hand in it; and, though he did not deny but he had the like part in the war continued against his majesty now raigning, he could not be conuicted without proofe of his appearing with a regiment in Southwark: but, as to the present case, here is neither king brought to death, nor war leuyed, nor any thing done in relation to either. Here is nothing but a meeting acted....a conspiracy, wherein it is not soe much as pretended that the matter which they are sayd to have conspired, was euer mentioned; and this war my accusers dreame of, was to be

peare, that any of the six (except himself) knew any thing of what that earl had designed; but certaine it is, that none of them had in a long time had any communication with him. The duke of Monmouth and himself thought him to be mad. I could say much of the earl of Essex, his thoughts of the same kind; and, besides the knowne dislikes which he had unto me, and I unto him and his wayes, I did not see his face in allmost a yeare before he went out of England, and had no communication with him afterwards. Noe man but the lord Howard had to this day explained the vast designes that were then knowne to soe many, that they could not be concealed; and he had not told the name of one of the ten thousand brisk boys, that were to doe such wonders. If he say true, nothing was done to adiust with such finesse the businesse of many pieces, beyond the most common discourses; and noe word fixed upon any man except the duke of Monmouth, who was of opinion, that a rabble could not resist a well metodized army. A scoller, that knoweth not the difference between metode and discipline, might giue such a terme unto the right soldiers of an army; but he that attributes it unto a soldier, shewes that the wholle is an inuention of his owne.

The mannagement of this affaire by the councill, or cabal, was equall unto the reasons of forming it; not one of thoes pieces were taken into a consideration: noe care taken of prouiding men, armes, ammunition, or places; noe mention made of any cor-

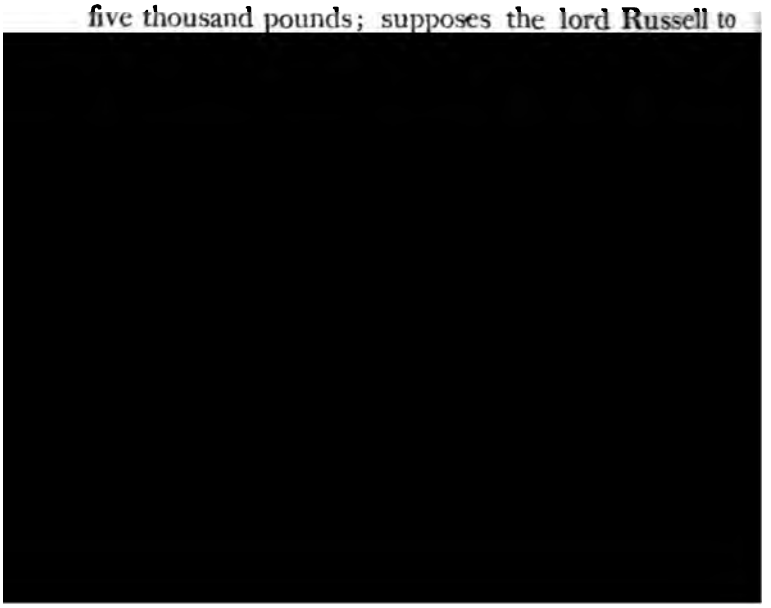
respondance in the citty or country, and mony, which was the principall point, was spoken of only jocosely, or by the waye of mirth.

This is a new way of carrying on the greatest businesse in the world, and, if it were true, could only shew, that the six were as mad as somme of them thought the earl of Shaftesburye; but, if the reputation that somme of them haue or had in the world, be compared unto that of the lord Howard, it will be thought more probable that he is a lier, then that they were fooles.

The rest of the romance is suitable unto this. He saith, that a correspondance was resolued with the earl of Argile; but doth not say how, by whomme, when, or why. The matter relating unto the other Scotchmen is not lesse crude: such as best understood matters of Scotland should be sent for; a canting letter written, and sent by Aaron Smith: but he

Hauing embarqued himself and his friends in this vast businesse, and aduanced it soe far as you haue heard, he thought that all was well, and it did not deserue his farther care: he lay idle at the least ten weeks in London, or at Knightsbridge, contenting himself only in asking me wheather Aaron Smith was gone; and then thought himself more concerned in uisiting a mannor of about two hundred pounds a yeare in Essex, then aduancing the businesse of war and state that he had undertaken: after hauing for a while loitered there, with the same indifference and serenity of minde, he made another iourney to the Bath: this is the parenthesis he mentions, that lasted almost six months: somme may impute it to the sedate constancy of a philosopher, others to the stupidity of a beast; but whoesoeuer considers the nature of the thing, and the temper of the person, can never belieue, that a wise or virtuous man could so shamefully neglect the most important interest of his friends or country; and such as know how much his lordship, through a most tender loue unto himself, is concerned in the most triuiall affaires that relate unto his person or interest, will as littell think he could be soe well at leisure, as not look after thoes that came so neare unto his life and fortune, if any such had bin then in agitation. "*Oportet mendacem esse memorem.*" If the prouerbe be true, that liars ought to haue good memoryes, his lordship, at my tryall, ought to haue thought of what he had sayd at the lord Russell's; and, if the story had bin too long to be exactly related, he might haue had recourse unto that which is in print. Sir H. Vane the elder, and others, being

examined at the earl of Strafford's triall, desired to see their first examinations taken in writing, least they might faile in any word; and the prosecuters, as well as judges, seeking nothing but truth and justice, allowed it. If the same ends had bin now sought, he might haue read out of the book what he had sayd at his first tryall, and suffered to say no more: but the drudgery of swearing was not ouer; somme other jobs must be done, before he could haue his pardon; that which he had sayd was not enough; and, notwithstanding his oath, that he knew no more, he must sweare more wheather he knew it or not. A fruitful fancy, spurred on by feare, and restrained neither by conscience nor shame, furnished matter abundantly; and all was receaued, though directly contrary to his former deposition upon the same thing: he frames a formall speech for Mr. Hamden, as an ouerture of the sessions; reduced the jocular discourese of mony to a more serious consideration of raising thirty or twenty five thousand pounds; supposes the lord Russell to



judges; but they, resoluing to receaue all that was against me, though evidently false, would neither suffer me to say the tenth part of what I had to alleage in my defence, nor to explaine or proue that which I proposed. When the chief justice did cut me off, I did as justly as I could, desire him to proceed softly and fairely; that a wise heathen had sayd, noe delay ought to be esteemed long, when the life of a man was in question; and that the scripture put an euil character upon thoes whoes feet were swift to shed blood; but all was in uain; the point of lawe concerning the different sorts of treasons, could not be heard; noe councell allowed to argue them; noe point of lawe saued, when I shewed, that here was in my case neither conspiracy against the life of the king, nor war leuyed; and that, that if by long series of far-fetched incohearent suppositions, any man fancied me to be guilty of treason, it must be by constructions which none but the Parliament could make; to proue this, I cited the statute 25 Ed. 3. and desired it might be read, with the prouiso that noe other court should take cognisance thereof; but I was ouerborne by the unreasonable uiolence of the chief justice, and denyed the reading of the statute, the assistance of councell to argue the points of lawe, or that any of thoes proposed by me should be saued unto me.

The first was, that, by the lawe, noe man could be tryed upon an indictement layd in a county, unlesse it were composed of freeholders. 2dly, The

court hauing declared that I was tryed upon the statute 21 Ed. 3. it ought to be declared upon what branch of that statute. 3dly, That though a conspiracy to leuy war were sworne by one witnesse, and that a credible one, I ought not to be thereupon indicted by the statute 1 Ed. 6. 12. the 5 of Ed. 6. 11. and the 13 Car. 2. 4thly, That conspiracy to leuy war is not treason, by the statute 21 Ed. 3. 5thly, That by the same, conspiring to leuy war is not an ouert act of compassing the king's death; and, though ouert acts were pretended, they are not to be inquired into, without the testimony of tow credible witnesses, by the 1 Ed. 6. 12. and I ought not to be obliged to confesse such a conspiracy if it be not proued. 6thly, Without admitting the fact, I ought to haue councell to argue the points of law arising upon the euidence; inasmuch as I may haue cause to demurre unto the euidence, and want their aduice thereupon. 7thly, That supposing the lord Howard to be a credible witnesse, he is but one: noe man can be thereupon found guilty, as appears by White

king, noe word or ouert act tending thereunto in giuing in euidence; nothing arising from suppositions, arguments, presumptions, or constructions, can make a man a traitor: the end of the statute 25 Ed. 3. was to take awaye ambiguityes, and uariety of opinions, and the decisions of all such cases as are thereby referred to the Parliament.

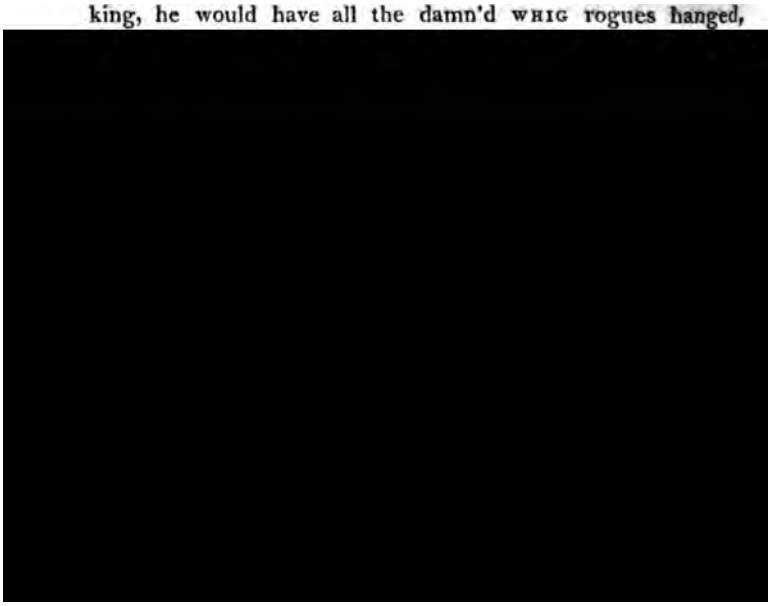
If theis points were not allowed, councell might haue been admitted to argue them, or saued to be found specially as was desired; but all in uaine.

I well knew the disorder that had bin brought upon the nation in the time of Ri. the 2. when as it is sayd in the statute 1 H. 4. noe man knew what to speak, or what to doe, for feare of treason; that the like was declared, statute 1 Ma. and by the — Ed. 6. expresse words, and open preaching, to compasse the deposing of the king, setting up another title, etc. though proued expressely by tow credible witnesses, were not made treason; and could haue easily inferred "*a fortiori*," that a polemike discourse, left imperfect, neuer examined, neuer shewed to any man, writ long since, relating in generall unto such cases as thoes of Tarquin, Caligula, Nero, Vitellius, Peter the Cruell of Castile, the degenerated races of Meroneus, or Charles the Great, or the like, could haue noe relation unto any statute of treason in England; but the chief justice would not suffer me to speak.

This explained a mistery which noe man could

before understand; they, whoe saw I was not brought to a trial with the lord Russell, belieued, that, * if the iayles did not furnish sonme other euidence against me, I should be released without a trial; but when theis, and many other points of lawe were over-ruled without hearing, it plainely appeared, that my triall was deffered † until an undersherife cou'd

* Mr. Aaron Smith deposed, that he was prisoner in the Tower when lord Russell and Colonel Sydney were tryed; and was kept close prisoner above nineteen weeks, at five pounds a week charge, and two warders watched him, or lay in the room. That one of his warders told him that Mr. Ambrose Philips was come to speak with him, and had an order from one of the secretaries to come as often as he would, and bring whom he would with him; but then he was alone. When Mr. Philips came in, after some other discourse, he told him, it was in his power to make himself what he would; for, said he....You know this rogue Sydney is a traytor, and you may make yourself what you will, if you will discover what you know of his designs against the government....That he replied, He could not say any thing that could touch a hair of Colonel Sydney's head; and that then Mr. Philips said, If he might advise the king, he would have all the damn'd WHIG rogues hanged,



be made, that would pack a jury with Burton and Graham, and the bench could be filled with such judges, as had noe understand of the lawe, nor re-

out two solicitors to manage such matters, Burton and Graham; who were, indeed, fitter men to have served in a court of inquisition, than in a legal government.

Burnet's Hist. of his own times.

Mr. Graham, the solicitor of all the late sham plots upon Protestants, and pay-master of corrupt juries and perjured witnesses, solicited this prosecution against the Earl of Shaftesbury, and hence took his first step to such preferment as enabled him to give eight or ten thousand pounds with a daughter.

A display of Tyranny. Or remarks upon the illegal and arbitrary proceedings in the courts of Westminster and Guildhall; from the year 1678, to the abdication of the late King James: in which time the rule was, "*Quod principi placuit lex esto.*" London, printed anno *Angliae salutis primo*, 1689, part 1, p. 66, in duod.

Then the jury immediately gave in their verdict, that the defendant (Sir Samuel Barnardiston, bart.) was guilty of the offence and misdemeanor charged in the indictment; as no doubt they resolved to do, before they heard one word of the matter. The judgment upon this verdict was, "That the defendant should pay ten thousand pounds fine, and be imprisoned till paid, and to find sureties for his good behaviour for life." Accordingly, he was committed for the fine, to the king's-bench, and continued a prisoner four or five years, which satisfied not; but Graham and Burton, those instruments of rapin and oppression, broke in upon his estate, and, besides the waste and destruction made, levyed to their own use and the king's, about six thousand pounds.

The same, page 214.

gard unto reason, justice, truth, or common sence; for words, though sworn by two credible witnesses, could not be brought within the 25 Ed. 3. only by

Upon this occasion of health drinking, I cannot hinder myself from remembering the case of Mr. Elias Best, a substantial citizen, but one who had been an ignoramus jurymen, a great reproach and an unpardonable crime in that day; as, sir, you very feelingly know. He was indicted for the frolic of drinking to the pious memory of honest Stephen Colledge, and condemned to a fine of a thousand pounds, to stand three times in the pillory, and to give sureties for his good behaviour for life. On this judgment, he was imprisoned three years; to the loss of a good trade, and to the ruin of his health and estate; and when almost ready to expire, he was graciously pardoned, upon payment of 200l. to the Empson and Dudley of the late reign, Graham and Burton.

The same, part II, in the epistle dedicatory, to Sir Samuel Barnardiston, bart.

Mr. Normansel and Mr. Trotman, the secondaries, deposed ....That Graham and Burton were the prosecutors of lord Russell; that Sir Dudley North had the books from them, and returned lord Russell's jury; that juries had usually been re-

but such as theis, according to the authority of
k and Hales, and Pine's case; nor taken for an
t act of compassing the king's death. But they

ter this, he (John Hambden, Esq.) was brought to a trial
isdemeanor, and was convicted on the lord Howard's evi-
:. He pleaded *magna charta*, that a *salvo contenemento*;
ie court fined him forty thousand pounds, and to imprison-
till the fine was paid, and security for his good behaviour.
king made his choice of putting him in prison, and he was
nitted to the marshal's house in the king's-bench, where
is ten months. He offered several sums of money, and
answered, "They had rather have him rot in prison than
he fine." After this, they put him in the common prison,
e he was kept ten or eleven months very close. Then
contrived a writ, called a long writ, to reach his real and
nal estate, whilst he was thus a prisoner. After this, he
l a new witness appeared, which was after the defeat of the
of Monmouth. He was (then) sent close prisoner to the
:r, by the lord Sunderland's warrant, and put into such a
where he had no conveniency, and with two of the rudest
:rs in the Tower, to lie in the room with him. After seven
ght weeks, he was removed to Newgate, where he was kept
eleven weeks. His friends offered money for his pardon
ne in power, who were the lord Jefferyes and Mr. Petre;
im was six thousand pounds, and that was effectual. It is
ossible for a man to suffer more than he did. By the help
e money, on condition he would plead guilty to his indict-
, he was to come off. His friends advised him to it, be-
: it could hurt none; there being none living of those called
ouncil of six, but the lord Howard. Whereupon, pleading
r, he was discharged; paying three or four hundred pounds
eton and Graham, for the charge of his pardon.

The same, part II, p. 301.

Monday, June 20, 1689.

r. Chrisly reported from the committee, to whom the bill
nnulling the attainder of Sir Thomas Armstrong was re-

could bring the most confused, improbable and contradictory relations of one man of noe credite, a proofe of a conspiracy; and as an ouert act hath [hatch]

committed, some amendments to the bill; as also who were his prosecutors; and also what losses Sir Thomas Armstrong's family had sustained by reason of the attainder; and thereupon it was resolved, "That Sir Richard Holloway (late recorder of Oxford, whose part in the dispatching of Stephen Colledge advanced him to this station, as this author elsewhere observes); Sir Francis Wythens, the executors of the late lord Jefferyes and of the late justice Walcot, Mr. Graham, and Mr. Burton do attend the house (of Commons) on Saturday morning next, to answer to such matters as are charged against them touching the proceeding against Sir Thomas Armstrong." Then Mrs. Mathews, Sir Thomas Armstrong's daughter, was called in, and examined what she knew of the prosecution against her father; and Sir Robert Sawyer, then attorney general, being named by her as one of the prosecutors, after she was withdrawn, he was heard in his place to what was objected against him, and then he withdrew, and upon debate of the matter, it was resolved, "That Sir Robert Sawyer's name be put into the bill as one of the prosecutors of Sir Thomas Armstrong." Resolved, "That Sir Robert Sawyer be expelled the house for the same."

Saturday, Jan. 25, 1689.

The house being acquainted, that according to their order, Sir Francis Wythens, Sir Richard Holloway, Mr. Graham, and Mr. Burton attended at the door, they were severally called in and examined, touching the prosecution and proceedings against Sir Thomas Armstrong. And also the executors of the late lord Jefferyes, that were attending at the door, were likewise called in, and asked what they had to say, why reparation should not be made out of the lord Jefferyes' estate to the said Sir Thomas Armstrong's family. No persons appearing as executors to the late justice Walcot; the house was acquainted, that he died intestate, and had not left an estate sufficient to pay his debts. After the persons before-mentioned

up his credite with papers as ill proued, and containing matters unknowne unto him, and hauing noe coherence with what he sayd. Such as they only

were heard and withdrawn, Mr. Blaney was called in, who gave the house an account of the proceedings in the court of king's bench, upon the awarding execution against Sir Thomas Armstrong. And then the house proceeded upon the amendments made by the committee to the bill, for annulling the attainder of Sir Thomas Armstrong: and after having inserted the name of Sir Robert Sawyer, as a prosecutor, and resolved, "That the sum of five thousand pounds should be paid by the judges and prosecutors to Sir Thomas Armstrong's lady and children, as a recompense of the losses they had sustained by reason of his attainder:" the bill was recommitted, &c. &c.

The same, part 1, p. 225.

The Commons (1680) did also assert the right of the people to petition for a Parliament. And because some in their counter-petitions had expressed their abhorrence of this practice, they voted these abhorrers to be betrayers of the liberties of the nation. They expelled one Wythens out of their house for signing one of these, though he with great humility confessed his fault, and begged pardon for it. The merit of this soon raised him to be a judge; for indeed he had no other merit. They fell also on Sir George Jefferyes, a furious declaimer at the bar: but he was raised by that, as well as by his prosecution.

Burnet's History of his own times, vol. 1, p. 484.

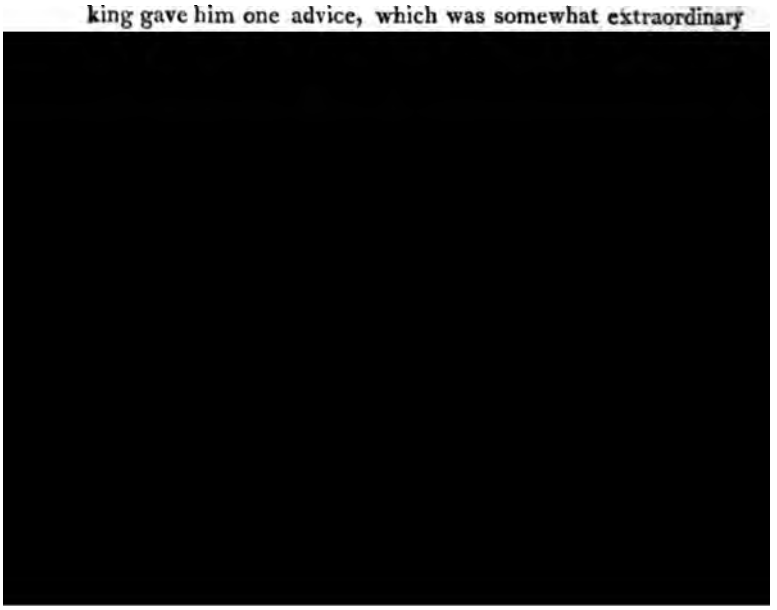
The addresses had now (1683) gone round England. The grand juries made, after that, high presentments against all that were esteemed whigs and nonconformists. Great pains were taken to find out more witnesses. Pardons and rewards were offered very freely. But none came in; which made it evident, that nothing was so well laid, or brought so near execution as the witnesses had deposed: otherwise people would have been

could suffer a witnesse to guesse a man into treason, or make the most extrauagent guessings or supposition to passe for euidence.

crowding in for pardons. All people were apprehensive of very black designs, when they saw Jefferyes made lord chief justice, who was scandalously vicious, and was drunk every day; besides a drunkenness of fury in his temper, that looked like enthusiasm. He did not consider the decencies of his post: nor did he so much as affect to seem impartial as became a judge, but run out upon all occasions into declamations, that did not become the bar, much less the bench. He was not learned in his profession; and his eloquence, though viciously copious, yet was neither correct nor agreeable. Pemberton was turned out of the common pleas, and Jones was put in his place: and Jefferyes had three judges joined with him in the king's bench, fit to sit by him.

The same, part 1, p. 568.

When Jefferyes came to the king at Windsor, soon after this trial (of Sir Thomas Armstrong, 1684) the king (C. II.) took a ring of good value from his finger, and gave it him for these services. The ring upon that was called his blood stone. The king gave him one advice, which was somewhat extraordinary



Such as they only could fancy, that a few scraps of old paper, refuting the doctrines of one of the most wicked and foolish books that ever was written

among them, they were dancing; and upon that the music was called for. This was so illegal, and so inhuman, that it might have been expected that some notice would have been taken of it. But Kirk was only chid for it: and it was said, that he had a particular order for some military executions, so that he could only be chid for the manner of it.

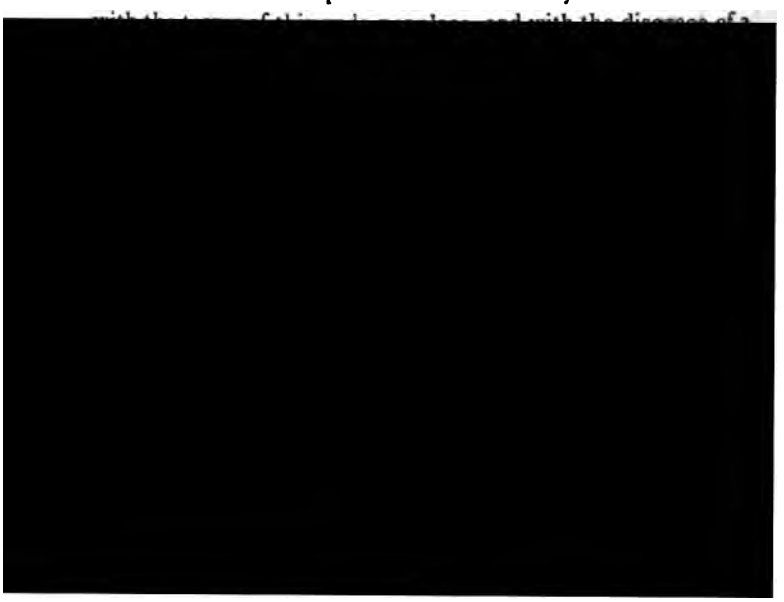
But, as if this had been nothing, Jefferyes was sent the western circuit to try the prisonsers. His behaviour was beyond any thing that was ever heard of in a civilized nation. He was perpetually either DRUNK, or in a rage, liker a fury than the zeal of a judge. He required the prisoners to plead guilty, and in that case he gave them some hope of favour, if they gave him no trouble; otherwise he told them he would execute the letter of the law upon them in its utmost severity. This made many plead guilty, who had a great defence in law. But he shewed no mercy. He ordered a great many to be hanged up immediately, without allowing them a minute's time to say their prayers. He hanged, in several places about six hundred persons. The greatest part of these were of the meanest sort, and of no distinction. The impieties with which he treated them, and his behaviour towards some of the nobility and gentry that were well affected, but came and pleaded in favour of some prisoners, would have amazed one, if done by a Bashaw in Turkey. England had never known any thing like it. The instances are too many to be reckoned up.

But that which brought all his excesses to be imputed to the king himself, and to the orders given by him was, that the king had a particular account of all his proceedings writ to him every day; and he took pleasure to relate them in the drawing-room to foreign ministers, and at his table, calling it Jefferey's campaign: speaking of all he had done in a style that neither became the majesty nor the mercifulness of a great prince, etc. etc. etc.

The same, p. 648.

in the world, tended to the subuersion of our government; and that his approbation of the slaughter of Caligula, or the insurrections against Nero, were

As soon as it was known at London, that the king (James 2) was gone, the 'prentices and the rabble, who had been a little quieted when they saw a treaty on foot between the king and the prince (of Orange) now broke out again upon all suspected houses, where they believed there were either priests or Papists. They made great havock of many places, not sparing the houses of ambassadours. But none were killed, no houses burnt, nor were any robberies committed. Never was so much fury seen under so much management. Jefferyes, finding the king was gone, saw what reason he had to look to himself; and, apprehending that he was now exposed to the rage of the people, whom he had provoked with so particular a brutality, he had disguised himself to make his escape. But he fell into the hands of some who knew him. He was insulted by them with as much scorn and rudeness as they could invent; and, after many hours tossing him about, he was carried to the lord mayor (Sir John Chapman, knt.) whom they charged to commit him to the Tower, which the lord Lucas had then seized, and in it had declared for the prince. The lord mayor was so struck



ouert acts of conspiring the death of the king now raigning in England. The thing was fit to be brought only before such as sought to deserue the preferrements unto which they were unworthily aduanced, by doing such jobs as would haue bin abhorred by any that had understood the principles or ends of gouernments, examined the history of the world, or seen that if it were in no case lawful for people to rise against a prince, there is not a prince in the world that can haue a lawfull title to the crowne he bears; the most part of our kings, since William the Norman, were usurpers; or, which is worse, usurpation conferres a just title.

Theis only, hauing admitted an indictment grounded wholly upon suppositions, innuendoes, and intentionels, could hearken unto the lord Howard; whoe coniectures what I and others meant, whoe writ the letter into Scotland, to whome it was directed, what were the contents and effects of it, though he would not speak precisely to any of thoes points.

he might be sent to the Tower, which at last was granted him, not as a favour, but in hopes of seeing him shortly conducted from thence to the gallows. It is pretended, he offered to discover many secrets, and for that reason, was kept some time in prison, till the affairs of government should be settled. But he died in that interval, by the blows he had received, according to some; drinking spiritous liquors, according to others; and, as some pretend, of the stone. Never man had better deserved public punishment, as an atonement for all the mischiefs done to his country, and for all the blood spilt by his means.

Rapin's Hist. of England.

Theis only could think him a credible witnesse, when they had heard him sweare himself periured, and the contents of his deposition were, by his owne assertions, as in the presence of God, proued to be false by nine irreproachable witnesses.

Theis only could suffer a jury to suppose, that an evidence can be grounded upon an opinion of a similitude in writing, when they know it is none; that a book was written with an intention to stirre up the people, when they hardly sawe the fiftyeth part of it, and would not suffer the tenth of that to be read; that papers, written perhaps twenty or thirty yeares agoe, were intended in prosecution of designes layd within ten months.

Theis only could receaue an indictement, in which the king's title of *defender of the faith* was ommitted; refuse a copy, when it was demanded, and the statute 46. Ed. 3. produced, whereby it is enacted, that

They only could pach [patch] up an euidence, consisting of two parts, as the lord Howard's deposition, and the papers upon the similitude of a hand, when they knew both of them to be voide in lawe; and tack them together, when it was apparent, they neither had nor could haue any relation unto each other.

It was a work for them only, impudently and without hearing, to ouer-rule many most important points of lawe; by their word to depriue the wholle English nation of their right of being tryed by freeholders, which is as generall and antient as any part of our lawes; to make discourses at a priuate meeting, imperfectly, uariously, and to their owne knowledge falsely reported, by a man of a most profligate life and reputation, to passe for a conspiracy; to oblige a prisoner falsely to acknowledge he had conspired to leuy war, or, contrary to the judgement of many Parliaments, to make a conspiracy to leuy war, to passe for treason; by the 25th of Ed. 3. to make such a conspiracy, which could not be treason in itself (though it had bin true) to be treason, as imagining the death of the king, though the lawes, and the most reuerenced expositors of them, declare that it is not so.

They only could take upon them by uarious improbable, absurd and false constructions, to make acts noe wayes comprehended within the words or meaning of the statute 25 Ed. 3. to passe for treason, when they knew themselues, by the same, to be for-

bidden to make any construction at all; and neither to suffer the statute to be read, councell heard, nor the points of law to be saued unto me.

None but such as they would haue suffered Mr. Solicitor, by a long painted speech, to haue misrepeated the evidence on both sides to mislead the jury; to haue represented the lord Howard's frequent attestations of God, that he knew of noe plot, believed there was none, and took that which was spoken of, to be an inuention of the priests, only as willingnesse to confesse it, and his many periuryes, as a mark of the truth of what he had sworne; and by such constructions as were absurd, impossible and false, to drive them headlong into a uerdict upon noe euidence, in matter of which they were utterly incapable of judging, if the law had referred unto them, and whoe were soe compacted and composed, as not to be capable of judging any matter relating unto the meanest thiefe.

If any others then theis had bin upon the bensh, I might haue bin heard, when I offer'd to answer unto theis fallacyes, and haue unrauelled all his frauds; though such a work could hardly be expected from a man of my education, and in an age that had much abated his uigour and memory. If this was denyed, the points of lawe might haue bin left to be found specially: but I was in all things ouerborne by the fury of the chief justice. He did probably feare he should not be taken for Cesar's friend, if he did let this man goe. He was to deserue his otherwise un-

deserued preferrement: To this end, he made a speech of about a hower and a quarter, soe confused, that I can give no other account of it, then that as he had bin long obserued to excell in the lawdable faculty of misleading juryes, he did exercise it with more confidence upon the bensh, then euer he had done at the bar; declared treasons that had bin hitherto unknowne, and that the jury was obliged to take that by law, which he judged to be soe; misrepresented the evidence more than the sollicitor had done; and as a rule which they were to follow, asserted, that if one man swore, that such a one sayd, he would with his knife kill the king, and another, that he had of him bought that knife, it was sufficient evidence to convict any man.

It may as easily be guessed, * what uerdict I expected from an ignorant, sordide and packed jury,

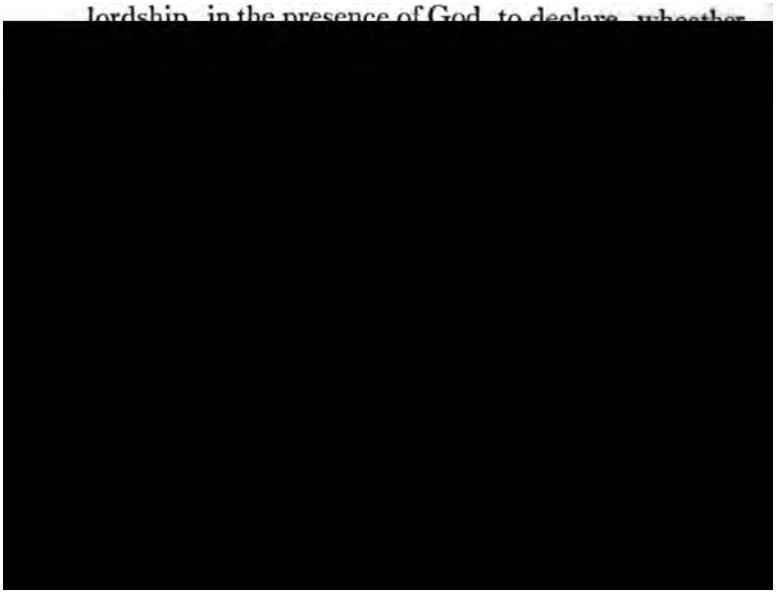
* Mr. Richard Wynne declared, that he was solicitor to Colonel Sydney; that the Colonel excepted against several of the jury; to some, as not being freeholders; to others, as being in the king's service, and receiving wages from his majesty. That presently after the tryal, the lord chief justice sent him prisoner to the king's bench, for saying, the jury were a loggerhead jury; and that they had not evidence sufficient to find such a verdict; or found a verdict contrary to evidence.

Mr. Wynne said this to Angier, the foreman of that murdering jury, and to Glisby, another of the three carpenters which were upon that jury, and to another of their brethren, near the king's-bench court; whereupon they went to lay hold on Mr. Wynne; at which instant Mr. Forth, the king's joyner, coming, interposed; upon which Angier said, Mr. Forth, will you assist this man? He says, Colonel Sydney's jury was a loggerhead jury: to which Mr. Forth answered, I have nothing to do with

upon such a direction, as what security any man in England can have for his life and estate, when such stuffe can be made to passe for law: but I was still ouerborne, and could not be heard, when I endeavoured to bring the chief justice to reflect upon his own extrauagancyes.

Before the tryall, I was credibly informed, that his lordship had soe far humbled himself, as to aduise with the king's councell of the wayes of compassing my death; and, that a paper containing the result of that consultation, had been seene upon Mr. Attorney's table. Since that time I haue bin told by persons of unblemished reputation, that, not satisfied with the directions given in publike, he had bin farther pleased, when he retired upon pretence of taking a glasse of sack, to followe the jury and giue them more particular instructions.

Vpon the first part, I was advised to coniure his lordship, in the presence of God, to declare, whether



When the jury brought in their uerdict, I desired to examine them *seriatim*, wheather every one of them had found me guilty, before it was recorded; and prepared to ask them particularly, wheather they had found me guilty of compassing the king's death? 2dly, Of leuying war against the king? 3dly, If they found me guilty of any treason, within the statute of 25 Ed. 3.? 4thly, If they found any treason proved against me by tow witnesses? And this I did, that I might not be deprived of the benefite of giuing in my exceptions; as I haue heard the lord Russel had lost it by not hauing moued it before the uerdict was recorded; but the chief justice would not heare me.

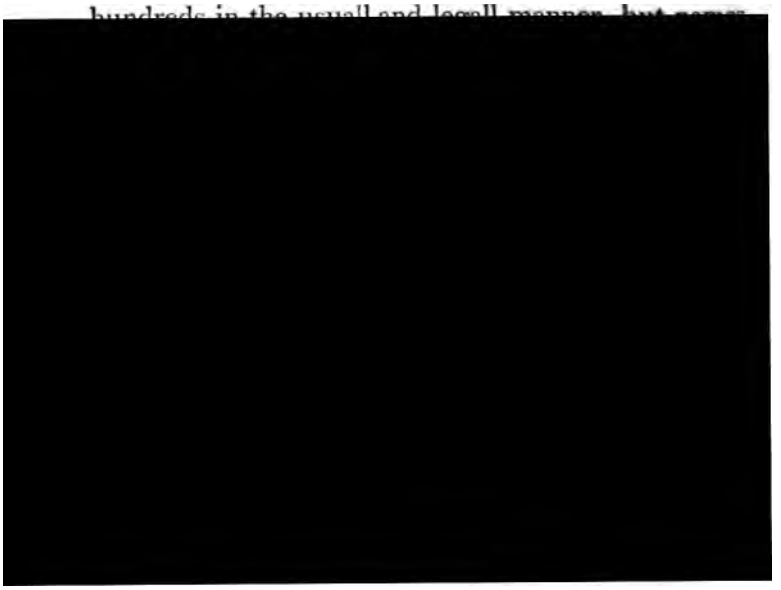
The irregularity of theis proceedings (that I may not use a harder word) obliged me, on the 25th of Nouember, to present a petition unto his majestye, shewing:

"That your petitioner, after a long and close imprisonment, was on the 17th of this month, brought with a guard of soldiers into the pallace-yard, upon a *habeas corpus*, directed to the lieutenant of the Tower, before any indictement had bin found against him; that whilest he was there detained, a bill was exhibited and found; whereupon he was immediately carried to the king's-bensh, and there arraigned: in this surprise, he desired a coppy of the indictement, leave to make his exceptions, or to put in a speciall plea, ready engrossed, which was also reiected without reading; and being thretned, that if he did not immediately plead guilty, or not guilty,

a judgment of high treason, should be entered, he was forced, contrary to law, as he supposed, to comme to a generall issue, in pleading non guilty.

"Nouember 21, he was brought to his tryall, and the indictement being perplexed and confused, soe as neither he, nor any one of his friends that heard it, could fully comprehend the scope of it, he was vtterly vnprouided of all the helps that the lawe allowcth unto euery man for his deffence; whereupon he did again desire a coppy, and produced an authentike coppy of the statute 46 Ed. 3. whereby it is enacted, that euery man shall haue a coppy of any record that toucheth him in any manner, as well that which is against the king as any other persone; but could neither obtaine a coppy of his indictement, nor that that statute should be read.

"The jury by which he was to be tryed, was not, as he informed, sumoned by the bailifs of the seuerall



persons, not befit to be of any jury, but was ouer-ruled by lord chief justice; and your petitioner forced to challenge them peremptorily, whome he found to be picked as most suitable unto their intentions, whoe sought his ruine, whereby he lost the benefite allowed by the lawe, of making his exception, and was forced to admit of mekanike persons, utterly unable to judge of such matters as were to be brought before them.

"The jury being sworne, noe witnesse was produced, whoe fixed any thing beyond hearsay upon your petitioner, except the lord Howard; and somme that swore the papers sayd to be found in his house and offered as a second witnesse, were written in a hand by your petitioner. Your petitioner produced ten witnesses, the most of them men of eminent quality, the others of unblemished fame, to shew the lord Howard's testimony was inconsistent with what he had, as in the presence of God, affirmed unto many of them, as he swore in the tryall of the lord Russell, under the same religious obligation of an oath, as if it had bin legally administered. Your petitioner did endeauour farther to shew the incongruity of his testimony, he being guilty of many crimes, which he did not pretend had any knowledge of; and hauing no other hope of pardon, then by the drudgery of swearing against him, deserued not to be belieued; and that similitude of hands could not be euidence, as was declared by the lord chief justice Keeling, and the whole court, in the lady Carr's case; soe as noe euidence at all remained against him:

that whosoeuer writ thoes papers, they were but a small part of a polemike discourse, in answer to a book written aboue thirty yeares agoe, upon a general proposition, applyed to noe time, or any particular case: that it was impossible to judge of any part of it, unlesse the wholle did appeare, which did not: that the sence of such as were produced, could not be comprehended, unlesse the wholle were [illegible] was denyed: that the ink and paper [illegible] them to have been written many years agoe; [illegible] Howard knowing nothing of them, they [illegible] concurrence with what your petitioner [illegible] designe with him and others.

That the confusion and errors in writing it, shewed that it had neuer so much as been reuiewed, and [illegible] a hand that noe man could read; were [illegible] for the presse, nor could be in somme [illegible] though the writer of them did intend it, which [illegible] that being only the present study [illegible] minute thoughts of a man, for the exercise of

[redacted]

ouer-ruled by the uiolence of the lord chief justice; and your petitioner soe frequently interrupted, the wholle methode of his deffeance was broken, and he not suffered to say the tenth part of what he could have alleaged in his deffence, and the jury carried into a uerdict that they did not know nor understand.

"Forasmuch as noe man that is oppressed in England can haue any reliefe unlesse it be from your majestye, your petitioner humbly prays, the premises considered, your majestye will be pleased to admit him into your presence; and if he doth not shew, that it is for your majestye's honour and interest to preserue him from the sayd oppression, he will not complaine, though he be left to be destroyed."

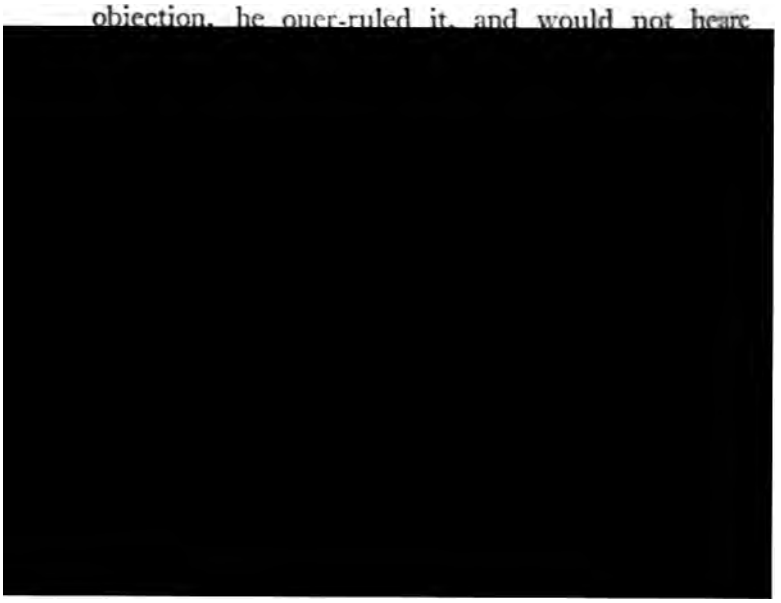
But he was pleased to referre me to the same judges of whome I complained.

Nouember 26, I was again brought to the bar, and asked by the chief justice, what reason I could alleage why judgment should not be pronounced against me? My first answer was, that I had no triall, the jury not hauing been composed of freeholders, as the law required. The chief justice sayd, the question had been decided at the lord Russell's triall. I replyed, the question had then bin concerning a corporation, this was upon an indictement layd in a county. He sayd, that was nothing, the decision had been generall. I desired to know, wheather any precedent could be alleaged, of an Englishman tryed by others then by freeholders; and that if this rule

were broken, any man might be tryed by his own groomes, or a jury made up of porters, carmen, or scauingers, and thereupon desired councell to argue it, which was denyed.

I then desired the indictement might be againe read, which was granted, but was not suffered to peruse it: this I did alsoe desire, upon an information that the bill had been mended since it came into the court; and that by a statute of Henry the Sixth, euery indictement was made void, whearein any word or sillable had bin added or changed; but not being suffered to see it, I could not tell what additions or alterations had bin made.

I then pleaded, that by the statute 13 Car. 2. it was treason to depriue the king of any of his titles; and that *defensor fidei* not being in the indictement, it was void, and desired councell to argue it; but though the chief justice seemed to be surprised at the objection, he ouer-ruled it, and would not heare



went about to shew reasons for what I sayd. Amongst others I shewed, that on the 7th of Nouember, I had bin brought to Westminster, by a *habeas corpus* granted the day before, when as yet noe bill was exhibited against me, and my prosecutors could not know it would be found, unlesse they had undewly corresponded with the grand jury. 2dly, That a copy of the indictement, the benefite of making my exceptions against it, or of putting in a speciall plea, which the lawe doth allowe, and the help of councell to frame them, or either of them, had bin denyed unto me. 3dly, The speciall plea which I presented, ready engrossed, to preuent the mischiefs that would followe upon my general answer unto a long, confused, imperfect, unintelligible indictement, had bin reiected, and thereby forced to comme to a generall issue, in pleading not guilty. Heareupon justice Withins, being (as seemed to me) uery drunk, told me, it was false; and the chief justice sayd, he had not reiected my plea, but told me the danger of putting it in, because the king's councell would demurr unto it, and I could not be suffered to plead hereafter. Hereupon I replyed, that hauing liued aboue threescore yeares, I had neuer receaued or deserued such language, for that I had neuer asserted any thing that was false; but, as to this particular, all that were present could witnesse my sayd plea had bin reiected: and the condition afterwards imposed, that I should not be admitted to put in any other plea that came to be ouer-ruled, was not according unto lawe; but I being ignorant of it, and

[illegible] forced to sub- [illegible] I had an then [illegible] I hide myself [illegible] voice by their [illegible] me. only. That [illegible] I and againe [illegible] alledged prece- [illegible] manner of the same [illegible] cases. as [illegible] and little puppyes [illegible] but [illegible] should be [illegible] and if time [illegible] that the [illegible] had not the [illegible] adding unto [illegible] voices [illegible] with the [illegible] summoned [illegible] me. and [illegible] Many of the king's

of judging such matters as came before them, but depriued of all lawful deffence.

I had many other things to offer, concerning the uncertainety and inualidety of the lord Howard's testimony. The utter impossibility of bringing papers written many yeares agoe, into a concurrence with a new plot, of which the plotters knew nothing. I desired that the duke of Monmouth, whoe now appeared, might be asked, wheather he had euer heard of them, as he must haue done, if they had been designed to stirre up the people, in order to councells taken with him. The weaknesse of an euidence taken from a similitude of hands; the unreasonablenesse of judging of a few sheets of a treatise, without seeing the wholle; the impossibility of bringing the matters layd unto my charge, within the statute of 25 Ed. 3. though they had bin proued; the iniustice of breaking the methode set for my defence; the fraud of the solicitour's representations; the irregularity and mistakes of his lordship's direction; the direct incapacity layd upon that court to judge of constructiue treasons; the manyfold errors in construing this to be treason, there being nothing to lead them unto it, but seauen or eight suppositions, of which euery one was false; and resolution taken not to heare any point of lawe argued, lest they should be theareby led unto truth: but nothing could be heard.

I had alsoe reason to moue for an arrest of judgment, that though I had granted what had bin sayd by lord Howard to be true, consulting to leuy war

can amount only unto words, and words only are held to be treason, according to Cook and Hales, and Pine's case, 4 Car. pr. 1.

Consulting to leuy war is noe overt act of compassing the king's death, as is sayd expressly by Cook and Hales; assembling to consult, can amount unto no more than to consult, and, legally considered, can be noe more than consulting, it being impossible in law or nature to consult without assembling, that is, comming together; soe as assembling to consult is noe more than bare consulting, that is, bare words.

That consulting, and sending into Scotland, if it had bin true, were no more than to consult with those that were to comme; that all this being testified only by the lord Howard, had bin intalide, though their credite had been good; as appears by Blake his law, and the Popish lords now in the Tower, who are thought to hold their liues only upon the weakness of one witnesse, though there were many concurrent circumstances. Whitebread's tryall was put off for the same reasons; and, beside that hath bin already sayd of the papers, I ought to have added the absurdity of pretending, that such as had been written many yeares agoe, not perfected, nor to be perfected in a long time, perhaps neuer, and neuer shewne unto any man liuing, should be intended to stirre up the people; whereupon a new tryall, an arrest of judgement, should be giuen; but I could not be heard; and though I did attest God and man, that I'l bin sufficiently heard, the chief justice with his

precipitation pronounced judgment of death against me as a traitor.

Somme that were present, affirm, that he acknowledged the late pretended plot did not affect me; but I confesse I did not obserue that, and think myself obliged unto him in nothing, but that he seemed to lay uery much weight upon the *old cause*, and my engagement in it, with which I am soe well satisfyed, as contentedly to dye for it.

When I heard the judgement, to the best of my remembrance, I sayd theis words....

'Why then, oh Lord! sanctify, I beseech thee, theis my sufferings unto me; sanctify me through my sufferings; sanctify me through thy truth; thy word is truth; impute not my blood unto this nation; impute it not unto the great city through which I shall be led to the place of death; let not my soul cry, though it lie under the altar; make no inquisition for it; or, if innocent blood must be expiated, let thy uangeance fall only upon the head of thoes, whoe knowingly and maliciously persecute me for righteousnesse sake.'

The chief justice then speaking, as if I had been a distempered man, I held out my arme, and desired any that were present to feele my pulse, and wheather any man could be more free from emotion; and I doe professe, that soe far as I doe knowe, and did then feel myself, I was neuer in a more quiet temper; glory and thanks be unto God for euer, who had filled me with comforts, and soe upholds me, that hauing,

as I hope, through Christ vanquished sin, he doth preserue me from the feares of death.

The chief justice having performed this exploit, is sayd to haue bragged unto the king, that no man in his place had euer rendered unto any king of England such seruices as he had done, in making it to passe for lawe, that any man might be now tryed by a jury not consisting of freeholders; and that one witnesse, with any concurrent circumstance (as that of the buying the knife) was sufficient to convict him. In this he seems to have spoken very modestly; for he might truly haue sayd, that he oueruled eight or ten very important points of lawe, and decided them without hearing; whereby the law itself was made a snare which no man could auoide, nor haue any security for his life or fortune, if one vile wretch could be found to sweare against him such circumstances as he required. Neuerthelesse wee all know, that the like had been done in former times. In the daves of Richard 2, the nation was brought

set up in the exercise of an arbitrary power over persons and states; * but now the tyranny ouer consciences is principally affected, and the ciuill powers

* There has now for diverse years, a design been carried on, to change the lawful government of England into an absolute tyranny, and to convert the established Protestant religion into downright Popery: than both which, nothing can be more destructive or contrary to the interest and happiness, to the constitution and being of the king and kingdom.

For if first we consider the state, the kings of England rule not upon the same terms with those of our neighbour nations, who, having by force or by address usurped that due share which their people had in the government, are now for some ages in possession of an arbitrary power (which yet no prescription can make legal) and exercise it over their persons and estates in a most tyrannical manner. But here the subjects retain their proportion in the legislature; the very meanest commoner of England is represented in Parliament, and is a party to those laws by which the prince is sworn to govern himself and his people. No money is to be levied but by the common consent. No man is for life, limb, goods, or liberty, at the soveraign's discretion: but we have the same right (modestly understood) in our propriety, that the prince hath in his regality; and in all cases where the king is concerned, we have our just remedy as against any private person of the neighbourhood, in the courts of Westminster-hall, or in the high court of Parliament. His very prerogative is no more than what the law has determined. His broad seal, which is the legitimate stamp of his pleasure, yet is no longer current, than upon the trial it is found to be legal. He cannot commit any person by his particular warrant. He cannot himself be witness in any cause: the balance of public justice being so delicate, not the hand only but even the breath of the prince would turn the scale. Nothing is left to the king's will, but all is subjected to his authority: by which means it follows that he can do no wrong, nor can he receive wrong: and a king of England keeping to these measures, may without arrogance be said to remain the only intelli-

are stretched unto this exorbitant height for the establishment of Popery. I believe that the people of God in England have, in their late years, generally

gent ruler over a rational people. In recompense, therefore, and acknowledgment of so good a government under his influence, his person is most sacred and inviolable; and whatsoever excesses are committed against so high a trust, nothing of them is imputed to him, as being free from the necessity or temptation, but his ministers only are accountable for all, and must answer it at their perils. He hath a vast revenue constantly arising from the hearth of the householder, the sweat of the labourer, the rent of the farmer, the industry of the merchant, and consequently out of the estate of the gentleman; a large competence to defray the ordinary expence of the crown, and maintain its lustre. And if any extraordinary occasion happen, or be but with any probable decency pretended, the whole land, at whatsoever season of the year, does yield him a plentiful harvest. So forward are his people's affections to give, even to superfluity, that a forainer (or Englishman that hath been long abroad) would think they could neither will nor chuse, but that the asking of a supply were a mere formality, it is so readily granted. He is the fountain of all honours, and has moreover the distribution of so many profitable offices of the household,

growne faint. Somme, through feare, haue deflected from the integrity of their principles. Somme haue too deeply plunged themselues in worldly

from that Romish yoak, which so great a part of christendome do yet draw and labour under. That Popery is such a thing as cannot, but for want of a word to express it, be called a religion: nor is it to be mentioned with that civility which is otherwise decent to be used, in speaking of the differences of humane opinion about divine matters. Were it either open Judaisme, or plain Turkery, or honest Paganisme, there is yet a certain *bona fides* in the most extravagant belief, and the sincerity of an erroneous profession may render it more pardonable: but this is a compound of all the three, an extract of whatsoever is most ridiculous and impious in them, incorporated with more peculiar absurdities of its own, in which those were deficient; and all this deliberately contrived, knowingly carried on by the bold imposture of priests, under the name of christianity. The wisdom of this fifth religion, this last and insolentest attempt upon the credulity of mankind seems to me, though not ignorant otherwise of the times, degrees and methods of its progress, principally to have consisted in their owning the scriptures to be the word of God, and the rule of faith and manners, but in prohibiting at the same time their common use, or the reading of them in public churches, but in a Latine translation, to the vulgar: there being no better or more rational way to frustrate the very design of the great institutor of christianity, who first planted it by the extraordinary gift of tongues, then to forbid the use even of the ordinary languages. For having thus a book which is universally avowed to be of divine authority, but sequestering it only into such hands as were intrusted in the cheat, they had the opportunity to vitiate, suppress, or interpret to their own profit those records by which the poor people hold their salvation. And this necessary point being once gained, there was thence forward nothing so monstrous to reason, so abhorring from morality, or so contrary to scripture, which they might not in prudence adventure on, &c.

cures, and, so as they might enjoy their trades and wealth, have leave regarded the treasure that is layed up in heaven. But I think there are very many who have kept their garments unspotted; and * hope that God will deliver them, and the nation for their sakes. God will not suffer this land, where the gospel hath of late florished more then in any part of the world, to become a slave of the world; he will not suffer it to be made a land of grauen images: he will stirre up witnesses of the truth, and, in his owne time, spirit his people to stand up for his cause, and deliuer them. I liued in this belief, and [illegible] about to dye in it. I knowe my Redeemer liues; and, as he hath in a great mesure upheld me in the day of my calamity, hope that he will still uphold me by his Spirite in this last moment, and giuing me grace to glorify him in my death, receaue me into the glory prepared for thoes that feare him, when my body shall be dissolued. Amen.

An account of the growth of Popery and arbitrary govern-

Discourses on Government,

BY

ALGERNON SYDNEY.

Discourses on Government.

CHAPTER I.

INTRODUCTION.

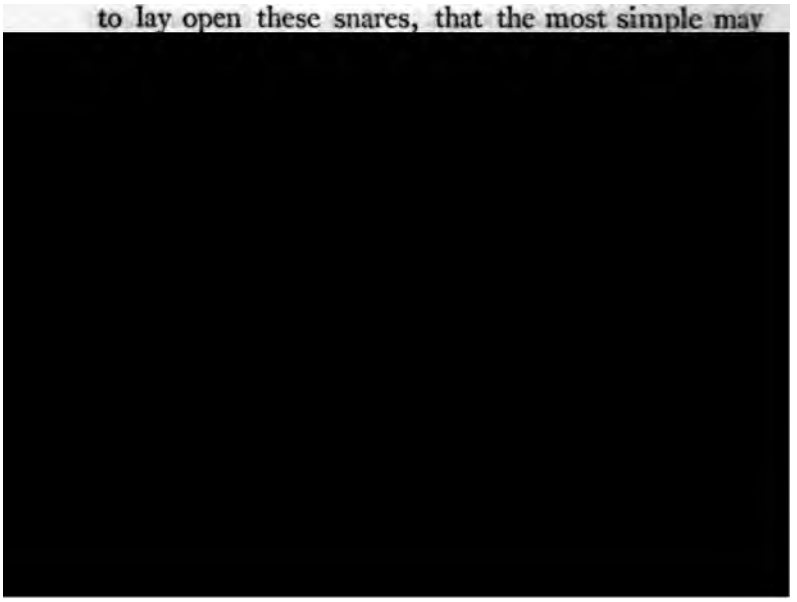
HAVING lately seen a book, intitled, "Patriarcha," written by Sir Robert Filmer, concerning the universal and undistinguished right of all kings, I thought a time of leisure might be well employed in examining his doctrine, and the questions arising from it: which seem so far to concern all mankind, that, besides the influence upon our future life, they may be said to comprehend all that in this world deserves to be cared for. If he say true, there is but one government in the world that can have any thing of justice in it; and those who have hitherto been esteemed the best and wisest of men, for having constituted commonwealths or kingdoms, and taken much pains so to proportion the powers of several magistracies, that they might all concur in procuring

the public good; or so to divide the powers between the magistrates and people, that a well regulated harmony might be preserved in the whole, were the most unjust and foolish of all men. They were not builders, but overthrowers of governments: their business was to set up aristocratical, democratical, or mixed governments, in opposition to that monarchy, which, by the immutable laws of God and nature, is imposed upon mankind; or presumptuously to put shackles upon the monarch, who, by the same laws, is to be absolute and uncontrouled: they were rebellious and disobedient sons, who rose up against their father; and not only refused to hearken to his voice, but made him bend to their will. In their opinion, such only deserved to be called good men, who endeavoured to be good to mankind, or to that country to which they were more particularly related: and inasmuch as that good consists in a felicity of estate, and perfection of person, they highly valued such as had endeavoured to make men better, wiser and happier. This they

unless the laws prevailed above the commands of men; and they were accounted as the worst of beasts, who did not prefer such a condition before a subjection to the fluctuating and irregular will of a man.

If we believe Sir Robert, all this is mistaken. Nothing of this kind was ever left to the choice of men. They are not to inquire what conduces to their own good: God and nature have put us into a way from which we are not to swerve: we are not to live to him nor to ourselves, but to the master that he hath set over us. One government is established over all, and no limits can be set to the power of the person that manages it. This is the prerogative, or, as another author of the same stamp calls it, "The royal charter" granted to kings by God. They all have an equal right to it; women and children are patriarchs; and the next in blood, without any regard to age, sex, or other qualities of the mind or body, are fathers of as many nations as fall under their power. We are not to examine whether he or she be young or old, virtuous or vicious, sober minded or stark mad; the right and power is the same in all. Whether virtue be exalted or suppressed; whether he that bears the sword be a praise to those that do well and a terror to those that do evil, or a praise to those that do evil and a terror to such as do well, it concerns us not; for the king must not lose his right, nor have his power diminished, on any account. I have been sometimes apt to wonder, how things of this nature could enter into the head of any man; or if no wickedness or folly

be so great, but some may fall into it, I could not well conceive why they should publish it to the world. But these thoughts ceased when I considered that a people, from all ages in love with liberty, and desirous to maintain their own privileges, could never be brought to resign them, unless they were made to believe, that in conscience they ought to do it; which could not be, unless they were also persuaded that there was a law set to all mankind, which none might transgress, and which put the examination of all those matters out of their power. This is our author's work. By this it will appear whose throne he seeks to advance, and whose servant he is, whilst he pretends to serve the king. And that it may be evident he hath made use of means suitable to the ends proposed for the service of his great master, I hope to shew that he hath not used one argument that is not false, nor cited one author whom he hath not perverted and abused. Whilst my work is so to lay open these snares, that the most simple may



SECTION I.

THE COMMON NOTIONS OF LIBERTY ARE NOT FROM SCHOOL DIVINES, BUT FROM NATURE.

In the first lines of this book he seems to denounce war against mankind, endeavouring to overthrow the principle of liberty in which God created us, and which includes the chief advantages of the life we enjoy, as well as the greatest helps towards the felicity, that is the end of our hopes in the other. To this end he absurdly imputes to the school divines that which was taken up by them as a common notion, written in the heart of every man, denied by none, but such as were degenerated into beasts, from whence they might prove such points as of themselves were less evident. Thus did Euclid lay down certain axioms which none could deny that did not renounce common sense, from whence he drew the proofs of such propositions as were less obvious to the understanding; and they may with as much reason be accused of Paganism, who say that the whole is greater than a part, that two halves make the whole, or that a straight line is the shortest way from point to point, as to say, that they who in politics lay such foundations as have been taken up by schoolmen and others as undeniable truths, do therefore follow them, or have any regard to their authority. Though the schoolmen were corrupt, they were

neither stupid nor unlearned: they could not but see that which all men saw, nor lay more approved foundations, than, that man is naturally free; that he cannot justly be deprived of that liberty without cause; and that he doth not resign it, nor any part of it, unless it be in consideration of a greater good, which he proposes to himself. But if he doth unjustly impute the invention of this to school divines, he in some measure repairs his fault in saying, "this hath been fostered by all succeeding Papists for good divinity: the divines of the reformed churches have entertained it, and the common people every where tenderly embrace it." That is to say, all christian divines, whether reformed or unreformed, do approve it, and the people every where magnify it, as the height of human felicity. But Filmer, and such as are like him, being neither reformed or unreformed christians, nor of the people, can have no title to christianity; and, inasmuch as they set themselves against that which is the height of human felicity, they declare themselves enemies to all

gressed was imposed upon him by man, and consequently that there was a man to impose it; for it will easily appear that neither the reformed nor unreformed divines, nor the people following them, do place the felicity of man in an exemption from the laws of God, but in a most perfect conformity to them. Our Saviour taught us, "not to fear such as could kill the body, but him that could kill, and cast into hell:" and the apostle tells us, that "we should obey God rather than man." It hath been ever hereupon observed, that they who most precisely adhere to the laws of God, are least solicitous concerning the commands of men, unless they are well grounded; and those who most delight in the glorious liberty of the sons of God, do not only subject themselves to him, but are most regular observers of the just ordinances of man, made by the consent of such as are concerned, according to the will of God.

The error of not observing this may perhaps deserve to be pardoned in a man that had read no books, as proceeding from ignorance, if such as are grossly ignorant can be excused when they take upon them to write of such matters as require the highest knowledge: but, in Sir Robert, it is prevarication and fraud to impute to schoolmen and puritans that which in his first page he acknowledged to be the doctrine of all reformed and unreformed christian churches, and that he knows to have been the principle in which the Grecians, Italians, Spaniards, Gauls, Germans, and Britons, and all other generous nations ever lived, before the name of

Christ was known in the world; inasmuch that the base, effeminate Asiatics and Africans, for being more less of their liberty, or unable to govern themselves were by Aristotle and other wise men called slaves by nature," and looked upon as little different from beasts.

This which hath its root in common sense, nothing to be overthrown by reason, he spares his pains of seeking any; but thinks it enough to render his doctrine plausible to his own party, by joining the Jesuits to Geneva, and coupling Buchanan to Doleman, as both maintaining the same doctrine; though he might as well have joined the puritans with the Turks, because they all think that one and one makes two. But whoever marks the proceedings of Filmer and his masters, as well as his disciples, will rather believe, that they have learned from Rome and the Jesuits to hate Geneva, than that Geneva and Rome can agree in any thing farther than as they are obliged to submit to the evidence of truth: or that

the king make the people? Is the king for the people, or the people for the king? Did God create the Hebrews, that Saul might reign over them? Or did they, from an opinion of procuring their own good, ask a king that might judge them and fight their battles?) If God's interposition, which shall be hereafter explained, do alter the case, did the Romans make Romulus, Numa, Tullus Hostilius, and Tarquinius Priscus kings? Or did they make or beget the Romans? If they were made kings by the Romans, 'tis certain they that made them sought their own good in so doing: and if they were made by and for the city and people, I desire to know, if it was not better, that when their successors departed from the end of their institution, by endeavouring to destroy it, or all that was good in it, they should be censured and ejected, than be permitted to ruin that people for whose good they were created? Was it more just that Caligula or Nero should be suffered to destroy the poor remains of the Roman nobility and people, with the nations subject to that empire, than that the race of such monsters should be extinguished, and a great part of mankind, especially the best, against whom they were most fierce, preserved by their deaths?

I presume our author thought these questions might be easily decided; and that no more was required to shew the forementioned assertions were not all desperate, than to examine the grounds of them; but he seeks to divert us from this inquiry, by proposing the dreadful consequences of subjecting

kings to the censures of their people; whereas all consequence can destroy any truth; and the worst of this is, that if it were received, some princes might be restrained from doing evil; or punished, if they will not be restrained. We are therefore only to consider, whether the people, senate, or any magistracy made by and for the people, have, or can have, such a right; for if they have, whatsoever the consequences may be, it must stand: and as the one tends to the good of mankind in restraining the lusts of wicked kings, the other exposes them, without remedy, to the fury of the most savage of all beasts. I am not ashamed in this to concur with Buchanan, Calvin, or Bellarmine; and without envy leave Filmer, and his associates, the glory of maintaining the contrary.

But notwithstanding our author's aversion to truth, he confesses, "that Hayward, Blackwood, Barclay, and others, who have bravely vindicated the right of kings in this point, do with one consent admit, as

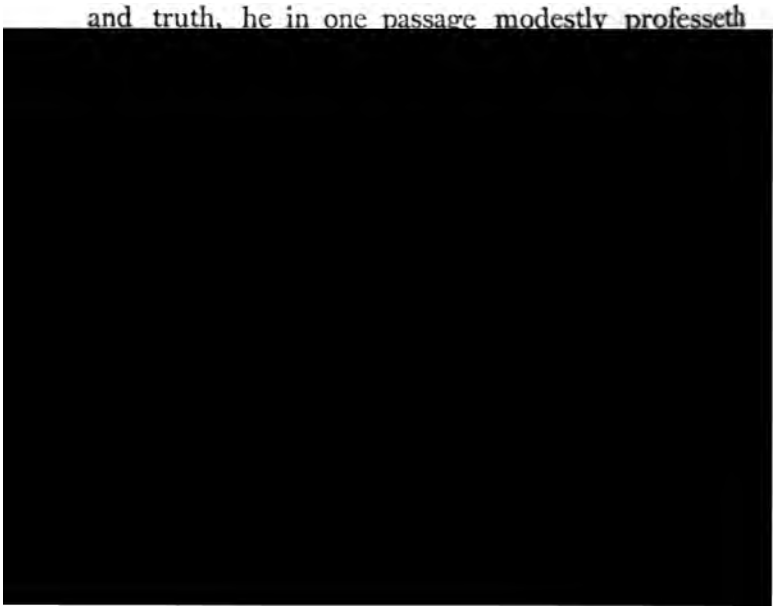
The productions of Laud, Manwaring, Sibthorp, Hobbs, Filmer, and Heylin, seem to have been reserved as an additional curse to complete the shame and misery of our age and country. Those who had wit and learning, with something of ingenuity and modesty, though they believed that nations might possibly make an ill use of their power, and were very desirous to maintain the cause of kings, as far as they could put any good colour upon it; yet never denied, that some had suffered justly (which could not be, if there were no power of judging them); nor ever asserted any thing that might arm them with an irresistible power of doing mischief; animate them to persist in the most flagitious courses, with assurance of perpetual impunity, or engage nations in an inevitable necessity of suffering all manner of outrages. They knew, that the actions of those princes, who were not altogether detestable, might be defended by particular reasons drawn from them, or the laws of their country; and would neither undertake the defence of such as were abominable, nor bring princes, to whom they wished well, into the odious extremity of justifying themselves by arguments that favoured Caligula and Nero, as well as themselves, and that must be taken for a confession, that they were as bad as could be imagined; since nothing could be said for them that might not as well be applied to the worst that had been or could be. But Filmer, Heylin, and their associates, scorning to be restrained by such considerations, boldly lay the ax to the root of the tree, and rightly enough affirm, "that the whole fabric of that which they call popular sedition

would fall to the ground, if the principle of natural liberty were removed." And on the other hand, it must be acknowledged, that the whole fabric of tyranny will be much weakened, if we prove, that nations have a right to make their own laws, constitute their own magistrates; and that such as are so constituted owe an account of their actions to those by whom, and for whom, they are appointed.

SECTION II.

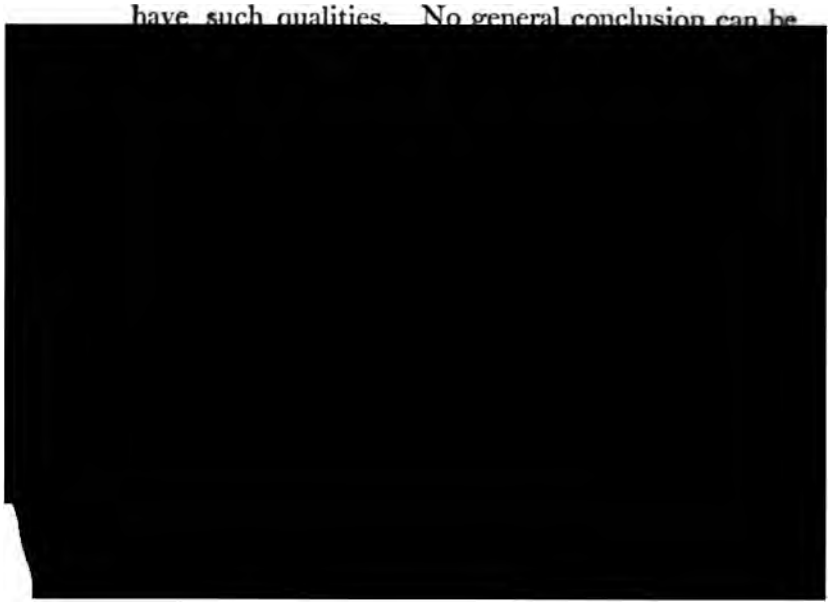
IMPLICIT FAITH BELONGS TO FOOLS; AND TRUTH IS COMPREHENDED BY EXAMINING PRINCIPLES.

WHILST Filmer's business is to overthrow liberty and truth, he in one passage modestly professeth



told them are true or false. This may shew whether our author or those of Geneva do best agree with the Roman doctrine: but his instance is yet more sottish than his profession. "An implicit faith," says he, "is given to the meanest artificer." I wonder by whom! Who will wear a shoe that hurts him, because the shoe-maker tells him it is well made? Or who will live in a house that yields no defence against the extremities of weather, because the mason or carpenter assures him it is a very good house? Such as have reason, understanding or common sense, will, and ought to make use of it in those things that concern themselves and their posterity, and suspect the words of such as are interested in deceiving or persuading them not to see with their own eyes, that they may be more easily deceived. This rule obliges us so far to search into matters of state, as to examine the original principles of government in general, and of our own in particular. We cannot distinguish truth from falsehood, right from wrong, or know what obedience we owe to the magistrate, or what we may justly expect from him, unless we know what he is, why he is, and by whom he is made to be what he is. These perhaps may be called "mysteries of state," and some would persuade us they are to be esteemed "arcana;" but whosoever confesses himself to be ignorant of them, must acknowledge that he is incapable of giving any judgment upon things relating to the superstructure; and in so doing evidently shews to others, that they ought not at all to hearken to what he says.

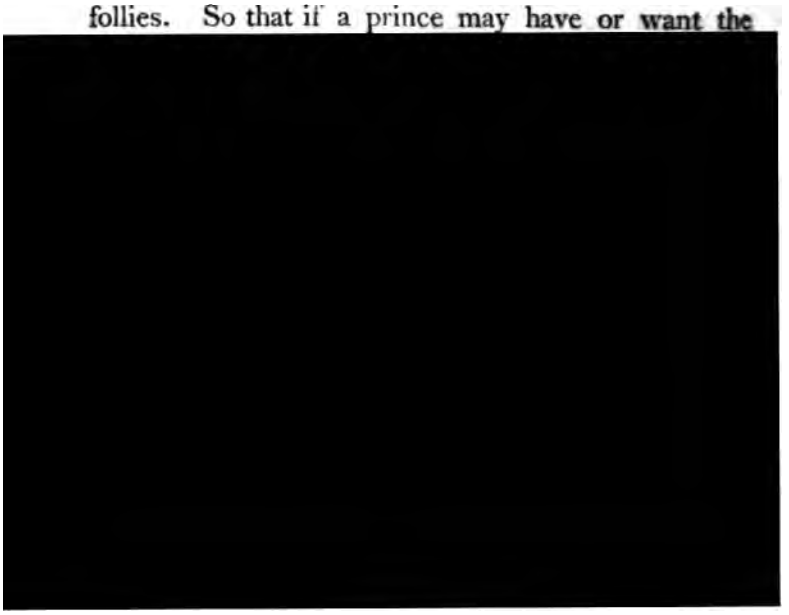
His argument to prove this is more admirable. "If an implicit faith," says he, "is given to the meanest artificer in his craft, much more to a prince in the profound secrets of government." But where is the consequence? If I trust to the judgment of an artificer, or one of a more ingenious profession, it is not because he is of it, but because I am persuaded he does well understand it, and that he will be faithful to me in things relating to his art. I do not send for Lower or Micklethwait when I am sick, nor ask the advice of Mainard or Jones in a suit of law, because the first are physicians, and the other lawyers: but because I think them wise, learned, diligent, and faithful, there being a multitude of others who go under the same name, whose opinion I would never ask. Therefore if any conclusion can be drawn from thence in favour of princes, it must be of such as have all the qualities of ability and integrity, that should create this confidence in me; or it must be proved that all princes, inasmuch as they are princes, have such qualities. No general conclusion can be



have been wanting in any, the whole falls to the ground; for no man enjoys as a prince that which is not common to all princes; and if every prince have not wisdom to understand these profound secrets, integrity to direct him according to what he knows to be good, and a sufficient measure of industry and valour to protect me, he is not the artificer to whom the implicit faith is due. His eyes are as subject to dazzle as my own. But it is a shame to insist on such a point as this. We see princes of all sorts; they are born as other men: the vilest flatterer dares not deny, that they are wise or foolish, good or bad, valiant or cowardly, like other men: and the crown doth neither bestow extraordinary qualities, ripen such as are found in princes sooner than in the meanest, nor preserve them from the decays of age, sickness, or other accidents, to which all men are subject: and if the greatest king in the world fall into them, he is as incapable of that mysterious knowledge, and his judgment is as little to be relied on, as that of the poorest peasant.

This matter is not mended by sending us to seek those virtues in the ministers which are wanting in the prince. The ill effects of Rehoboam's folly could not be corrected by the wisdom of Solomon's counsellors: he rejected them; and such as are like to him will always do the same thing. Nero advised with none but musicians, players, chariot drivers, or the abominable ministers of his pleasures and cruelties. Arcadius' senate was chiefly composed of buffoons and cooks, influenced by an old rascally

eunuch. And it is an eternal truth, that a weak or wicked prince can never have a wise council, nor receive any benefit by one that is imposed upon him, unless they have a power of acting without him; which would render the government in effect aristocratical, and would probably displease our author as much as if it were so in name also. Good and wise counsellors do not grow up like mushrooms; great judgment is required in chusing and preparing them. If a weak or vicious prince should be so happy as to find them chosen to his hand, they would avail him nothing. There will ever be a variety of opinions amongst them; and he that is of a perverted judgment will always chuse the worst of those that are proposed, and favour the worst men, as most like to himself. Therefore, if this implicit faith be grounded upon a supposition of profound wisdom in the prince, the foundation is overthrown, and it cannot stand; for to repose confidence in the judgment and integrity of one that has none, is the most brutish of all follies. So that if a prince may have or want the



had gone before, being nothing more than an absurd begging the main question, and determining it without any shadow of proof. He enjoins an active or passive obedience, before he shews what should oblige or persuade us to it. This indeed were a compendious way of obviating that which he calls popular sedition, and of exposing all nations, that fall under the power of tyrants, to be destroyed utterly by them. Nero or Domitian would have desired no more, than that those who would not execute their wicked commands, should patiently have suffered their throats to be cut by such as were less scrupulous: and the world, that had suffered those monsters for some years, must have continued under their fury, till all that was good and virtuous had been abolished. But in those ages and parts of the world, where there hath been any thing of virtue and goodness, we may observe a third sort of men, who would neither do villanies, nor suffer more than the laws did permit, or the consideration of the public peace did require. Whilst tyrants with their slaves and the instruments of their cruelties were accounted the dregs of mankind, and made the objects of detestation and scorn, these men who delivered their countries from such plagues were thought to have something of divine in them, and have been famous above all the rest of mankind to this day. Of this sort were Pelopidas, Epaminondas, Thrasibulus, Harmodius, Aristogiton, Philopemen, Lucis Brutus, Publius Valerius, Marcus Brutus, C. Cassius, M. Cato, with a multitude of others amongst the ancient heathens. Such as were instruments of the like de-

liverances amongst the Hebrews, as Moses, Othniel, Ehud, Barak, Gideon, Samson, Jephthah, Samuel, David, Jehu, the Maccabees, and others, have from the scriptures a certain testimony of the righteousness of their proceedings, when they neither would act what was evil, nor suffer more than was reasonable. But least we should learn by their examples, and the praises given to them, our author confines the subject's choice to acting or suffering, that is, doing what is commanded, or lying down to have his throat cut, or to see his family and country made desolate. This he calls giving to Cæsar that which is Cæsar's; whereas he ought to have considered, that the question is not whether that which is Cæsar's should be rendered to him, for that is to be done to all men; but who is Cæsar, and what doth of right belong to him, which he no way indicates to us: so that the question remains intire, as if he had never mentioned it, unless we do in a compendious way take his word for the whole.

only denies they can have any such, in subjecting them necessarily and universally to the will of one man; and says not a word that is not applicable to every nation in the world, as well as to our own. But as the bitterness of his malice seems to be most especially directed against England, I am inclined to believe he hurts other countries only by accident, as the famous * French lady intended only to poison her father, husband, brother, and some more of her nearest relations; but rather than they should escape, destroyed many other persons of quality, who at several times dined with them: and if that ought to excuse her, I am content he also should pass uncensured, though his crimes are incomparably greater than those for which she was condemned, or than any can be which are not of a public extent.

SECTION IV.

TO DEPEND ON THE WILL OF A MAN IS SLAVERY.

THIS, as he thinks, is farther sweetened by asserting, that he doth not inquire what the rights of a people are, but from whence; not considering, that whilst he denies they can proceed from the laws of natural liberty, or any other root than the grace and

* The Marchioness of Brinvilliers.

bounty of the prince, he declares they can have none at all. For as liberty solely consists in an independency upon the will of another, and by the name of slave, we understand a man who can neither dispose of his person or goods, but enjoys all at the will of his master: there is no such thing in nature as a slave, if those men or nations are not slaves who have no other title to what they enjoy than the grace of the prince, which he may revoke whensoever he pleaseth. But there is more than ordinary extravagance in his assertion, that "the greatest liberty in the world is for a people to live under a monarch," when his whole book is to prove, that this monarch hath his right from God and nature, is endowed with an unlimited power of doing what he pleaseth, and can be restrained by no law. If it be liberty to live under such a government, I desire to know what is slavery. It has been hitherto believed in the world, that the Assyrians, Medes, Arabs, Egyptians, Turks, and others like them, lived in slavery, because their princes were masters of their lives and goods: where-

mistaken; these men were slaves, and the Asiatics were free men. By the same rule the Venitians, Switzers, Grisons, and Hollanders, are not free nations: but liberty in its perfection is enjoyed in France and Turkey. The intention of our ancestors was, without doubt, to establish this amongst us by *magna charta*, and other preceding or subsequent laws; but they ought to have added one clause, that the contents of them should be in force only so long as it should please the king. King Alfred, upon whose laws *magna charta* was grounded, when he said the English nation was as free as the internal thoughts of a man, did only mean, that it should be so long as it pleased their master. This it seems was the end of our law, and we who are born under it, and are descended from such as have so valiantly defended their rights against the encroachments of kings, have followed after vain shadows, and without the expense of sweat, treasure, or blood, might have secured their beloved liberty, by casting all into the king's hands.

We owe the discovery of these secrets to our author, who, after having so gravely declared them, thinks no offence ought to be taken at the freedom he assumes of examining things relating to the liberty of mankind, because he hath the right common to all: but he ought to have considered, that in asserting that right to himself, he allows it to all mankind. And as the temporal good of all men consists in the preservation of it, he declares himself to be a mortal

enemy to those who endeavour to destroy it. If he were alive, this would deserve to be answered with stones rather than words. He that oppugns the public liberty, overthrows his own, and is guilty of the most brutish of all follies, whilst he arrogates to himself that which he denies to all men.

I cannot but commend his modesty and care, "not to detract from the worth of learned men." But it seems they were all subject to error, except himself, who is rendered infallible through pride, ignorance, and impudence. But if Hooker and Aristotle were wrong in their fundamentals concerning natural liberty, how could they be in the right when they built upon it? or if they did mistake, how can they deserve to be cited? or rather, why is such care taken to pervert their sense? It seems our author is by their errors brought to the knowledge of the truth. "Men have heard of a dwarf standing upon the shoulders of a giant, who saw farther than the giant:" but now that the dwarf standing on the ground sees that

others, who asserted the natural freedom of mankind, only in imitation of the schoolmen, to advance the power of the Pope; and would have compassed their design, if Filmer, and his associates, had not opposed them. These men had taught us to make the unnatural distinction between royalist and patriot, and keep us from seeing, "that the relation between king and people is so great, that their well-being is reciprocal." If this be true, how came Tarquin to think it good for him to continue king at Rome, when the people would turn him out? or the people to think it good for them to turn him out, when he desired to continue in? Why did the Syracusians destroy the tyranny of Dionysius, which he was not willing to leave, till he was pulled out by the heels? How could Nero think of burning of Rome? or why did Caligula wish the people had but one neck, that he might strike it off at one blow, if their welfare was thus reciprocal? 'Tis enough to say, these were wicked or mad men; for other princes may be so also; and there may be the same reason of differing from them. For if the proposition be not universally true, 'tis not to be received as true in relation to any, till it be particularly proved; and then 'tis not to be imputed to the quality of prince, but to the personal virtue of the man.

I do not find any great matters in the passages taken out of Bellarmine, which our author says comprehend the strength of all that ever he heard, read, or seen produced for the natural liberty of the subject: but he not mentioning where they are to

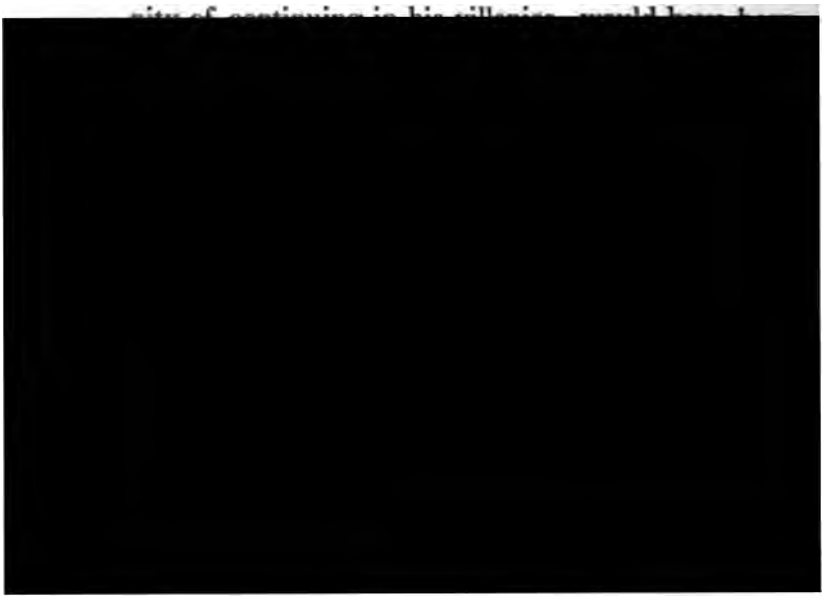
be found, I do not think myself obliged to examine all his works, to see whether they are rightly cited or not: however, there is certainly nothing new in them: we see the same, as to the substance, in those who wrote many ages before him, as well as in many that have lived since his time, who neither minded him, nor what he had written. I dare not take upon me to give an account of his works, having read few of them: but, as he seems to have laid the foundation of his discourses in such common notions as were assented to by all mankind, those who follow the same method have no more regard to Jesuitism and Popery, though he was a Jesuit and Cardinal, than they who agree with Faber, and other Jesuits, in the principles of geometry, which no sober man did ever deny.

cludes, "that if, by the law of God, the power be immediately in the people, God is the author of a democracy." And why not, as well as of a tyranny? Is there any thing in it repugnant to the being of God? Is there more reason to impute to God Caligula's monarchy, than the democracy of Athens? Or is it more for the glory of God, to assert his presence with the Ottoman or French monarchs, than with the popular governments of the Switzers and Grisons? Is pride, malice, luxury, and violence, so suitable to his being, that they who exercise them are to be reputed his ministers? And is modesty, humility, equality, and justice, so contrary to his nature, that they who live in them should be thought his enemies? (Is there any absurdity in saying, that since God in goodness and mercy to mankind hath, with an equal hand, given to all the benefit of liberty, with some measure of understanding how to employ it, 'tis lawful for any nation, as occasion shall require, to give the exercise of that power to one or more men, under certain limitations and conditions; or to retain it to themselves, if they think it good for them? If this may be done, we are at an end of all controversies concerning one form of government established by God, to which all mankind must submit; and we may safely conclude, that having given to all men, in some degree, a capacity of judging what is good for themselves, he hath granted to all likewise a liberty of inventing such forms as please them best, without favouring one more than another.)

His second observation is grounded upon a falsity in matter of fact. Bellarmine does not say, that de-

mocracy is an ordinance of God, more than any other government; nor that the people have no power to make use of their right; but that they do, that is to say ordinarily, transmit the exercise of it to one or more. And it is certain they do sometimes, especially in small cities, retain it in themselves. But whether that were observed or not by Bellarmine, makes nothing to our cause, which we defend, and not him.

The next point is subtle; and thinks thereby to have brought Bellarmine, and such as agree with his principle, to a nonplus. He doubts who shall judge of the lawful cause of changing the government; and says, it is a pestilent conclusion to place that power in the multitude." But why should this be esteemed pestilent? or to whom? If the allowance of such a power in the senate was pestilent to Nero, it was beneficial to mankind; and the denial of it, which would have given to Nero an opportu-

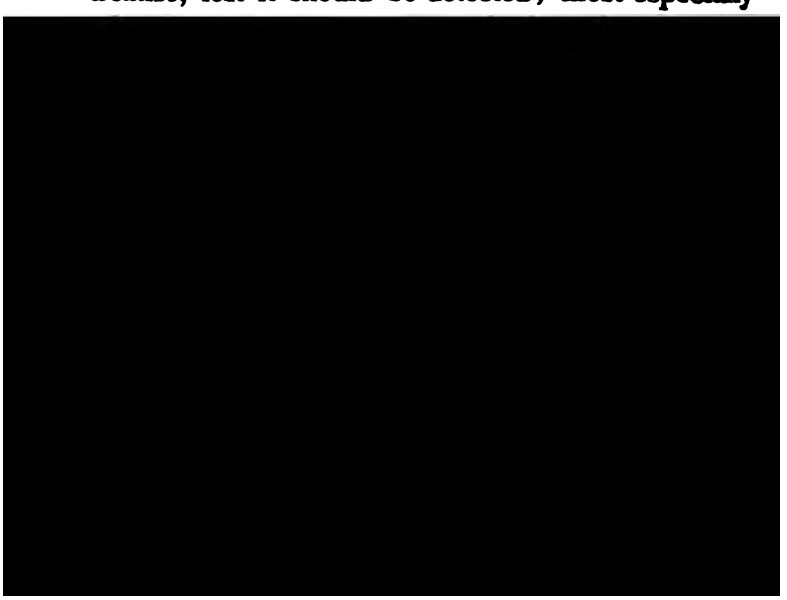


than their brethren, till it was conferred on him or them, it cannot be believed, that rational creatures would advance one or a few of their equals above themselves, unless in consideration of their own good; and then I find no inconvenience in leaving to them a right of judging, whether this be duly performed or not. We say in general, "he that institutes, may also abrogate; * most especially when the institution is not only by, but for, himself. If the multitude therefore do institute, the multitude may abrogate; and they themselves, or those who succeed in the same right, can only be fit judges of the performance of the ends of the institution." Our author may perhaps say, the public peace may be hereby disturbed; but he ought to know, there can be no peace where there is no justice; nor any justice, if the government instituted for the good of a nation be turned to its ruin. But in plain English, the inconvenience with which such as he endeavour to affright us, is no more than that he or they, to whom the power is given, may be restrained or chastised, if they betray their trust; which I presume will displease none, but such as would rather subject Rome, with the best part of the world depending upon it, to the will of Caligula or Nero, than Caligula or Nero to the judgment of the senate and people; that is, rather to expose many great and brave nations to be destroyed by the rage of a savage beast, than subject that beast to the judgment of all, or the choicest men of them, who can have no in-

* Cujus est instituere, ejus est abrogare.

terest to pervert them, or other reason to be severe to him, than to prevent the mischiefs he would commit, and to save the people from ruin.

In the next place he recites an argument of Bellarmine, that "it is evident in scripture God hath ordained powers; but God hath given them to no particular person, because by nature all men are equal; therefore he hath given power to the people or multitude." I leave him to untie that knot, if he can; but, as it is usual with impostors, he goes about by surmises to elude the force of his argument, pretending that in some other place he had contradicted himself, and acknowledged that every man was prince of his posterity; "because, that if many men had been created together, they ought all to have been princes of their posterity." But it is not necessary to argue upon passages cited from authors, when he that cites them may be justly suspected of fraud, and neither indicates the place nor treatise, lest it should be detected; most especially



power, or a right of transmitting it to his heirs and successors, upon which the doctrine of our author wholly depends. On the contrary, the same law that gave to my father a power over me, gives me the like over my children; and if I had a thousand brothers, each of them would have the same over their children. (Bellarmine's first argument therefore being no way enervated by the alledged passage, I may justly insist upon it, and add, that God hath not only declared in scripture, but written on the heart of every man, that as it is better to be clothed, than to go naked; to live in a house, than to lie in the field; to be defended by the united force of a multitude, than to place the hopes of his security solely in his own strength; and to prefer the benefits of society, before a savage and barbarous solitude; he also taught them to frame such societies, and to establish such laws as were necessary to preserve them.) And we may as reasonably affirm, that mankind is forever obliged to use no other clothes than leather breeches, like Adam; to live in hollow trees, and eat acorns, or to seek after the model of his house for a habitation, and to use no arms except such as were known to the patriarchs, as to think that all nations forever obliged to be governed as they governed their families. This I take to be the genuine sense of the scripture, and the most respectful way of interpreting the places relating to our purpose. It is hard to imagine that God, who hath left all things to our choice, that are not evil in themselves, should tie us up in this; and utterly incredible that

he should impose upon us a necessity of following his will, without declaring it to us. Instead of constituting a government over his people, consisting of many parts, which we take to be a model fit to be imitated by others, he might have declared in a word, that the eldest man of the eldest line should be king; and that his will ought to be their law. This had been more suitable to the goodness and mercy of God, than to leave us in a dark labyrinth, full of precipices; or rather, to make the government given to his own people, a false light to lead us to destruction. This could not be avoided, if there were such a thing as our author calls a "lord paramount over his children's children to all generations." We see nothing in scripture, of precept or example, that is not utterly abhorrent to this chimera. The only sort of kings mentioned there with approbation, is such a one "as may not raise his heart above his brethren."* If God had constituted a lord paramount with an absolute power, and multitudes of nations were to labour and fight for his greatness and

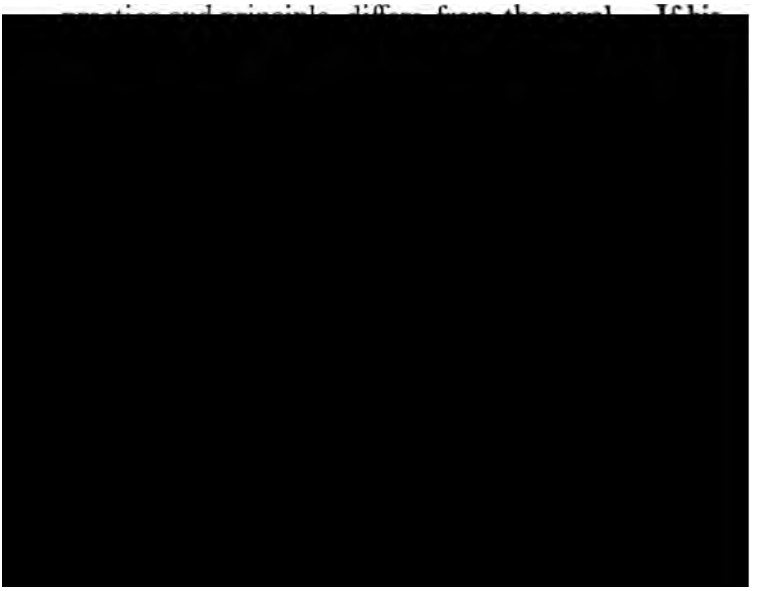
and worse, by the pride, luxury, and other vices that always attend the highest fortunes. It is no less incredible, that God, who disposes all things in wisdom and goodness, and appoints a due place for all, should, without distinction, ordain such a power to every one succeeding in such a line, as cannot be executed; the wise would refuse, and fools cannot take upon them the burden of it, without ruin to themselves and such as are under them: or expose mankind to a multitude of other absurdities and mischiefs; subjecting the aged to be governed by children; the wise, to depend on the will of fools; the strong and valiant, to expect defence from the weak or cowardly; and all in general to receive justice from him, who neither knows nor cares for it.

SECTION VI.

ABRAHAM AND THE PATRIARCHS WERE NOT KINGS.

If any man say, that we are not to seek into the depth of God's counsels; I answer, that if he had, for reasons known only to himself, affixed such a right to any one line, he would have set a mark upon those who come of it, that nations might know to whom they owe subjection; or given some testimony of his presence with Filmer and Heylin, if he had sent them to reveal so great a mystery. Till that be done, we may safely look upon them as the worst of men, and

teachers only of lies and follies. This persuades me little to examine what would have been, if God had at once created many men, or the conclusions that can be drawn from Adam's having been alone. For nothing can be more evident, than that if many had been created, they had been all equal, unless God had given a preference to one. All their sons had inherited the same right after their death; and no dream was ever more empty, than his whimsey of Adam's kingdom, or that of the ensuing patriarchs. To say the truth, it is hard to speak seriously of Abraham's kingdom, or to think any man to be in earnest who mentions it. He was a stranger, and a pilgrim in the land where he lived, and pretended to no authority beyond his own family, which consisted only of a wife and slaves. He lived with Lot as with his equal, and would have no contest with him, because they were brethren. His wife and servants could neither make up nor be any part of a kingdom, inasmuch as the despotical government, both in



our author's purpose. For if they had been as many in number as the army of Semiramis, they could have no relation to the regal, much less to the paternal power; for a father doth not buy, but beget children.

Notwithstanding this, our author bestows the proud title of "lord paramount" upon him, and transmits it to Isaac, who was indeed a king like his father, great, admirable, and glorious in wisdom and holiness, but utterly void of all worldly splendor or power. This spiritual kingdom was inherited by Jacob, whose title to it was not founded on prerogative of birth, but election, and peculiar grace; but he never enjoyed any other worldly inheritance, than the field and cave which Abraham had bought for a burying place, and the goods he had gained in Laban's service.

The example of Judah's sentence upon Tamar, is yet farther from the purpose, if possible; for he was then a member of a private family, the fourth son of a father then living; neither in possession, nor under the promise of the privileges of primogeniture, though Reuben, Simeon, and Levi fell from it by their sins. Whatsoever therefore the right was, which belonged to the head of the family, it must have been in Jacob; but as he professed himself a keeper of sheep, as his fathers had been, the exercise of that employment was so far from regal, that it deserves no explication. If that act of Judah is to be imputed to a royal power, I have as much as I ask: he, though living with his father,

and elder brothers, when he came to be of age to have children, had the same power over such as were of, or came into his family, as his father had over him; for none can go beyond the power of life and death: the same, in the utmost extent, cannot at the same time equally belong to many. If it be divided equally, it is no more than that universal liberty which God hath given to mankind, and every man is a king, till he divest himself of his right, in consideration of something that he thinks better for him.

SECTION VII.

NIMROD WAS THE FIRST KING, DURING THE LIFE OF CUSH, HAM, SHEM, AND NOAH.

altar, sacrificed to the Lord, was a husbandman, planted a vineyard, and performed such offices as bear nothing of the image of a king, for the space of three hundred and fifty years. We have reason to believe, that his sons after his death continued in the same manner of life, and the equality properly belonging to brethren. It is not easy to determine, whether Shem or Japheth were the elder; but Ham is declared to be the younger; and Noah's blessing to Shem * seems to be purely prophetical and spiritual, of what should be accomplished in his posterity; with which Japheth should be persuaded to join. If it had been worldly, the whole earth must have been brought under him, and have forever continued in his race, which never was accomplished, otherwise than in the spiritual kingdom of Christ, which relates not to our author's lord paramount.

As to earthly kings, the first of them was Nimrod, the sixth son of Cush the son of Ham, Noah's younger and accursed son. This kingdom was set up about a hundred and thirty years after the flood, whilst Cush, Ham, Shem, and Noah were yet living; whereas if there were any thing of truth in our author's proposition, all mankind must have continued under the government of Noah whilst he lived; and that power must have been transmitted to Shem, who lived about three hundred and seventy years after the erection of Nimrod's kingdom; and must have come to Japheth, if he was the elder; but could

* Gen. ix.

never come to Ham, who is declared to have been certainly the younger, and condemned to be a servant to them both; much less to the younger son of his son, whilst he, and those to whom he and his posterity were to be subjects, were still living.

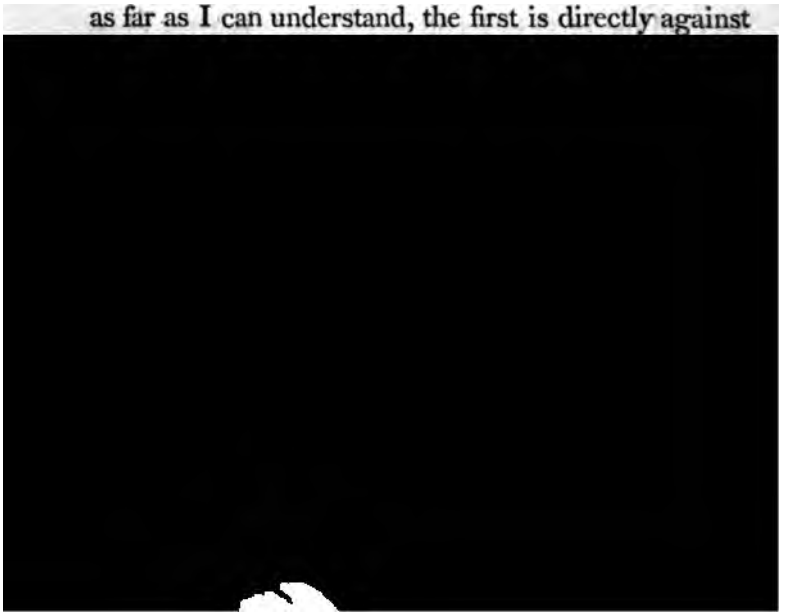
This rule therefore, which the partizans of absolute monarchy fancy to be universal and perpetual, falling out in its first beginning directly contrary to what they assert; and being never known to have been recovered, were enough to silence them, if they had any thing of modesty or regard to truth. But the matter may be carried farther: for the scripture doth not only testify, that this kingdom of Nimrod was an usurpation, void of all right, proceeding from the most violent and mischievous vices, but exercised with the utmost fury that the most wicked man of the accursed race, who set himself up against God and all that is good, could be capable of. The progress of this kingdom was suitable to its institution: that which was begun in wickedness

that which resembles it in pride, cruelty, injustice, and madness.

But the shameless rage of some of these writers is such, that they rather choose to ascribe the beginning of their idol to this odious violence, than to own it from the consent of a willing people; as if they thought, that as all action must be suitable to its principle, so that which is unjust in its practice, ought to scorn to be derived from that which is not detestable in its principle. It is hardly worth our pains to examine whether the nations, that went from Babel after the confusion of languages, were more or less than seventy-two, for they seem not to have gone according to families, but every one to have associated himself to those that understood his speech; and the chief of the fathers, as Noah and his sons, were not there, or were subject to Nimrod; each of which points doth destroy, even in the root, all pretence to paternal government. Besides, it is evident in scripture, that Noah lived three hundred and fifty years after the flood; Shem five hundred; Abraham was born about two hundred and ninety years after the flood, and lived one hundred seventy-five years: he was therefore born under the government of Noah, and died under that of Shem: he could not therefore exercise a regal power whilst he lived, for that was in Shem: so that in leaving his country, and setting up of a family for himself that never acknowledged any superior, and never pretending to reign over any other, he fully shewed

he thought himself free, and to owe subjection to none: and, being as far from arrogating to himself any power upon the title of paternity, as from acknowledging it in any other, left every one to the same liberty.

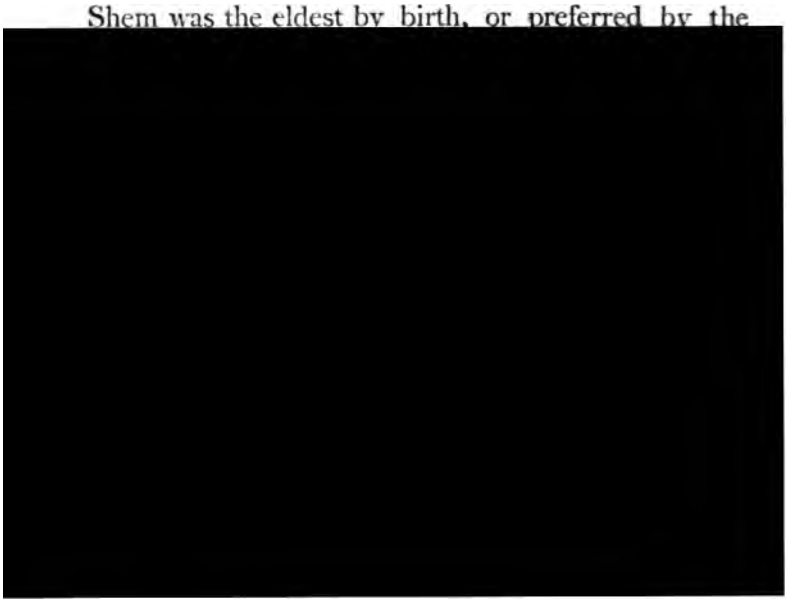
The punctual enumeration of the years that the fathers of the holy seed lived, gives us ground of making a more than probable conjecture, that they of the collateral lines were, in number of days, not unequal to them; and if that be true, Ham and Cush were alive when Nimrod set himself up to be king. He must therefore have usurped this power over his father, grandfather, and great grandfather; or, which is more probable, he turned into violence and oppression the power given to him by a multitude; which, like a flock without a shepherd, not knowing whom to obey, set him up to be their chief. I leave to our author the liberty of choosing which of these two doth best suit with his paternal monarchy; but as far as I can understand, the first is directly against



tradict him, if I may know over whom he reigned. Paternal monarchy is exercised by the father of the family over his descendants, or such as had been under the dominion of him whose heir he is. But Abraham had neither of these: those of his nearest kindred continued in Mesopotamia, as appears by what is said of Bethuel and Laban. He had only Lot with him, over whom he pretended no right: he had no children till he was an hundred years old (that is to say, he was a king without a subject); and then he had but one. I have heard, that * "sovereigns do impatiently bear competitors;" but now I find subjection also doth admit of none. Abraham's kingdom was too great when he had two children; and, to disburden it, Ishmael must be expelled soon after the birth of Isaac. He observed the same method after the death of Sarah: he had children by Keturah; but he gave them gifts, and sent them away, leaving Isaac like a stoical king reigning in and over himself, without any other subject till the birth of Jacob and Esau. But his kingdom was not to be of a larger extent than that of his father: the two twins could not agree; Jacob was sent away by his mother; he reigned over Esau only, and it is not easy to determine who was the heir of his worldly kingdom; for though Jacob had the birthright, we do not find he had any goods, than what he had gotten in Laban's service. If our author say true, the right of primogeniture, with the

* Omnisque potestas impatiens consortis erit.
Lucan. l. 1. v. 92.

dominion perpetually annexed by the laws of God and nature, must go to the eldest: Isaac therefore, though he had not been deceived, could not have conferred it upon the younger; for man cannot overthrow what God and nature have instituted. Jacob, in the court language, had been a double rebel, in beguiling his father, and supplanting his brother. The blessing of being lord over his brethren could not have taken place. Or if Isaac had power, and his act was good, the prerogative of the elder is not rooted in the law of God or nature, but is a matter of conveniency only, which may be changed at the will of the father, whether he know what he does or not. But if this paternal right to dominion were of any value, or dominion over men were a thing to be desired, why did Abraham, Isaac, and Jacob content themselves with such a narrow territory, when, after the death of their ancestors, they ought, according to that rule, to have been lords of the world? All authors conclude, that Shem was the eldest by birth, or preferred by the



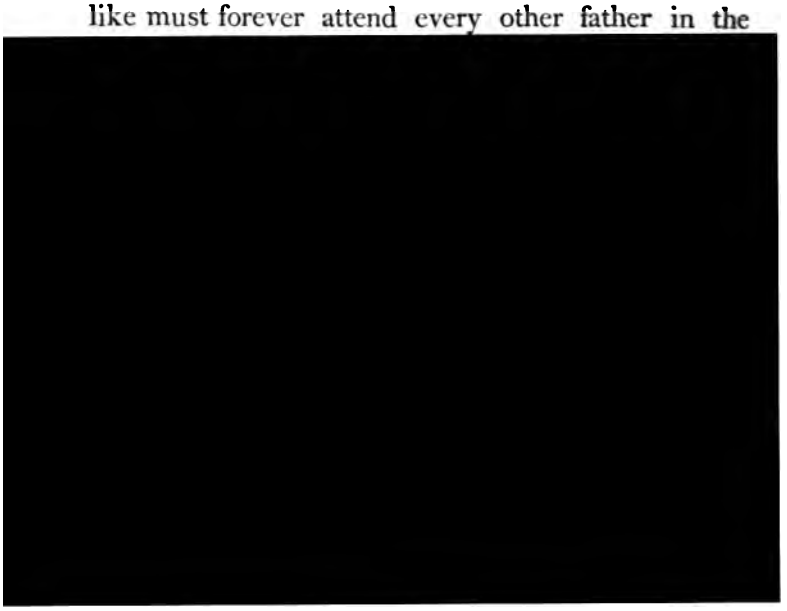
to, his fathers. If he was fallen from his right, Jacob might have claimed it: but God was his inheritance; and, being assured of his blessing, he contented himself with what he could gain by his industry, in a way that was not at all suitable to the pomp and majesty of a king. Which way soever therefore the business be turned, whether, according to Isaac's blessing, Esau should serve Jacob; or our author's opinion, Jacob must serve Esau; neither of the two was effected in their persons: and the kingdom of two being divided into two, each of them remained lord of himself.

SECTION VIII.

THE POWER OF A FATHER BELONGS ONLY TO A FATHER.

THIS leads us to an easy determination of the question, which our author thinks insoluble. "If Adam was lord of his children, he doth not see how any can be free from the subjection of his parents." For as no good man will ever desire to be free from the respect that is due to his father, who did beget and educate him, no wise man will ever think the like to be due to his brother or nephew, that did neither. If Esau and Jacob were equally free; if Noah, as our author affirms, divided Europe, Asia,

and Africa amongst his three sons, though he cannot prove it; and if seventy-two nations, under so many heads or kings, went from Babylon to people the earth about a hundred and thirty years after the flood, I know not why, according to the same rule and proportion, it may not be safely concluded that in four thousand years kings are so multiplied, as to be in number equal to the men that are in the world; that is to say, they are, according to the laws of God and nature, all free, and independent upon each other, as Shem, Ham, and Japheth were. And therefore, though Adam and Noah had reigned alone, when there were no men in the world, except such as issued from them, that is no reason why any other should reign over those that he hath not begotten. As the right of Noah was divided amongst the children he left, and when he was dead no one of them depended on the other, because no one of them was father of the other; and the right of a father can only belong to him that is so; the like must forever attend every other father in the



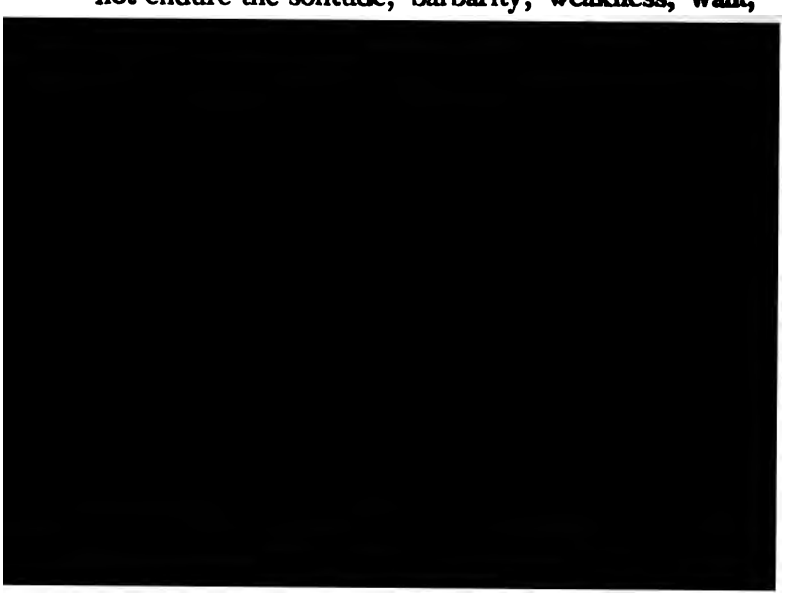
SECTION IX.

SUCH AS ENTER INTO SOCIETY, MUST IN SOME DEGREE DIMINISH THEIR LIBERTY.

REASON leads them to this: no one man or family is able to provide that which is requisite for their convenience or security, whilst every one has an equal right to every thing, and none acknowledges a superior to determine the controversies that upon such occasions must continually arise, and will probably be so many and great that mankind cannot bear them. Therefore, though I do not believe that Bellarmine said, a commonwealth could not exercise its power; for he could not be ignorant that Rome and Athens did exercise theirs, and that all the regular kingdoms in the world are commonwealths; yet there is nothing of absurdity in saying, that man cannot continue in the perpetual and entire fruition of the liberty that God hath given him. The liberty of one is thwarted by that of another; and whilst they are all equal, none will yield to any, otherwise than by a general consent. This is the ground of all just governments; for violence or fraud can create no right; and the same consent gives the form to them all, how much soever they differ from each other. Some small numbers of men, living within the precincts of one city, have, as it were, cast into a common stock, the right which they had of governing themselves and chil-

dren, and by common consent joining in one body, exercised such power over every single person as seemed beneficial to the whole; and this men call perfect "democracy." Others chose rather to be governed by a select number of such as excelled most in wisdom and virtue; and this, according to the signification of the word, was called "aristocracy;" or when one man excelled all others, the government was put into his hands under the name of "monarchy." But the wisest, best, and far the greatest part of mankind, rejecting these simple species, did form governments mixed or composed of the three, as shall be proved hereafter; which commonly received their respective denomination from the great part that prevailed, and did deserve praise or blame, as they were well or ill proportioned.

It were a folly hereupon to say, that the liberty for which we contend is of no use to us, since we cannot endure the solitude, barbarity, weakness, want,



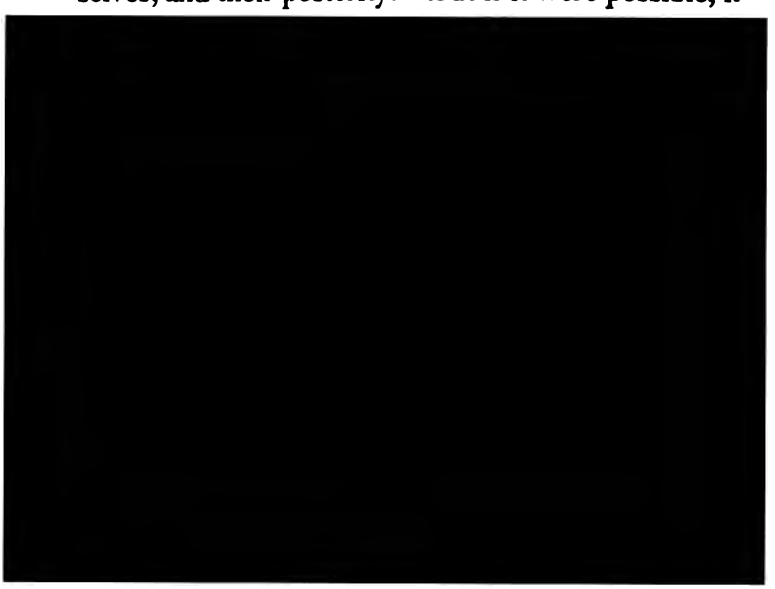
or wrong exercise of that power. If men are naturally free, such as have wisdom and understanding will always frame good governments; but if they are born under the necessity of a perpetual slavery, no wisdom can be of use to them; but all must forever depend on the will of their lords, how cruel, mad, proud, or wicked soever they be.

SECTION X.

NO MAN COMES TO COMMAND MANY, UNLESS BY CONSENT OR BY FORCE.

But because I cannot believe God hath created man in such a state of misery and slavery as I just now mentioned; by discovering the vanity of our author's whimsical patriarchal kingdom, I am led to a certain conclusion, that every father of a family is free and exempt from the domination of any other, as the seventy-two that went from Babel were. It is hard to comprehend how one man can come to be master of many, equal to himself in right, unless it be by consent, or by force. If by consent, we are at an end of our controversies: governments, and the magistrates that execute them, are created by man. They who give a being to them, cannot but have a right of regulating, limiting, and directing

them as best pleaseth themselves; and all our author's assertions concerning the absolute power of one man, fall to the ground: if by force, we are to examine how it can be possible or justifiable. This subduing by force we call conquest, but as he that forceth must be stronger than those that are forced, to talk of one man who in strength exceeds many millions of men, is to go beyond the extravagance of fables and romances. This wound is not cured by saying, that he first conquers one, and then more, and with their help others; for as to matter of fact, the first news we hear of Nimrod is, that he reigned over a great multitude, and built vast cities; and we know of no kingdom in the world, that did not begin with a greater number than one man could possibly subdue. If they who chose one to be their head, did, under his conduct subdue others, they were fellow-conquerors with him; and nothing can be more brutish, than to think, that by their virtue and valour they had purchased perpetual slavery to themselves, and their posterity. But if it were possible, it



kingdom to "usurpation and tyranny," might as well have acknowledged the same in the beginning, as he says all other authors have done. However, he ought not to have imputed to Sir Walter Raleigh an approbation of his right, as lord or king over his family; for he could never think him to be a lord by the right of a father, who, by that rule, must have lived and died a slave to his fathers that overlived him. Whosoever therefore, like Nimrod, grounds his pretensions of right upon usurpation and tyranny, declares himself to be like Nimrod, an usurper and a tyrant, that is, an enemy to God and man, and to have no right at all. That which was unjust in its beginning, can of itself never change its nature. "*Tempus in se*," saith Grotius, "*nullam habet vim effectricem.*"* He that persists in doing injustice, aggravates it, and takes upon himself all the guilt of his predecessors. But if there be a king in the world that claims a right by conquest, and would justify it, he might do well to tell whom he conquered, when, with what assistance, and upon what reason he undertook the war; for he can ground no title upon the obscurity of an unsearchable antiquity; and if he does it not, he ought to be looked upon as an usurping Nimrod.

* Lib. 2. c. 4. § 1. Duratio temporis naturam rei non immutat. Lib. 1. c. 3. § 11. n. 2.

SECTION XI.

THE PRETENDED PATERNAL RIGHT IS DIVISIBLE OR INDIVISIBLE: IF DIVISIBLE, IT IS EXTINGUISHED; IF INDIVISIBLE, UNIVERSAL.

THIS paternal right to regality, if there be any thing in it, is divisible or indivisible; if indivisible, as Adam hath but one heir, one man is rightly lord of the whole world, and neither Nimrod nor any of his successors could ever have been kings, nor the seventy-two that went from Babylon: Noah survived him near two hundred years: Shem continued one hundred and fifty years longer. The dominion must have been in him, and by him transmitted to his posterity forever. Those that call themselves kings in all other nations, set themselves up against the law of God and nature: this is the man we are to seek out,

pire of the world. If in conscience he could not take such a price for a dish of pottage, it must remain in Esau: however, our lord paramount must come from Isaac. If the deed of sale made by Esau be good, we must seek him amongst the Jews; if he could not easily divest himself of his right, it must remain amongst his descendants, who are Turks. We need not scruple the reception of either, since the late Scots act tells us, "that kings derive their royal power from God alone; and no difference of religion, &c. can divert the right of succession." But I know not what we shall do, if we cannot find this man; for, "*de non apparentibus & non existentibus eadem est ratio.*" The right must fall, if there be none to inherit: if we do not know who he is that hath the right, we do not know who is near to him: all mankind must inherit the right, to which every one hath an equal title; and that which is dominion, if in one, when it is equally divided amongst all men, is that universal liberty which I assert. Wherefore I leave it to the choice of such as have inherited our author's opinions, to produce this Jew or Turk that ought to be lord of the whole earth, or to prove a better title in some other person, and to persuade all the princes and nations of the world to submit: if this be not done, it must be confessed this paternal right is a mere whimsical fiction, and that no man by birth hath a right over another, or can have any, unless by the concession of those who are concerned.

If this right to an universal empire be divisible, Noah did actually divide it among his three

sons: seventy-and-two absolute monarchs did at once arise out of the multitude that had assembled at Babel: Noah, nor his sons, nor any of the holy seed, nor probably any elder than Nimrod having been there, many other monarchs must necessarily have arisen from them. Abraham, as our author says, was a king: Lot must have been so also; for they were equals: his sons, Ammon and Moab, had no dependance upon the descendants of Abraham. Ishmael and Esau set up for themselves, and great nations came of them: Abraham's sons by Keturah did so also; that is to say, every one, as soon as he came to be of age to provide for himself, did so, without retaining any dependance upon the stock from whence he came: those of that stock, or the head of it, pretended to no right over those who went from him. Nay, nearness in blood was so little regarded, that though Lot was Abraham's brother's son, Eliezer his servant had been his heir, if he had died childless. The like continued amongst Jacob's sons: no in-

been common and free at the first, and so continued for many hundreds of years after the flood, it was afterwards abolished, and a new one introduced. He that asserts this must prove it: but till it does appear to us; when, where, how, and by whom this was done, we may safely believe there is no such thing; and that no man is or can be a lord amongst us, till we make him so; and that by nature we are all brethren.

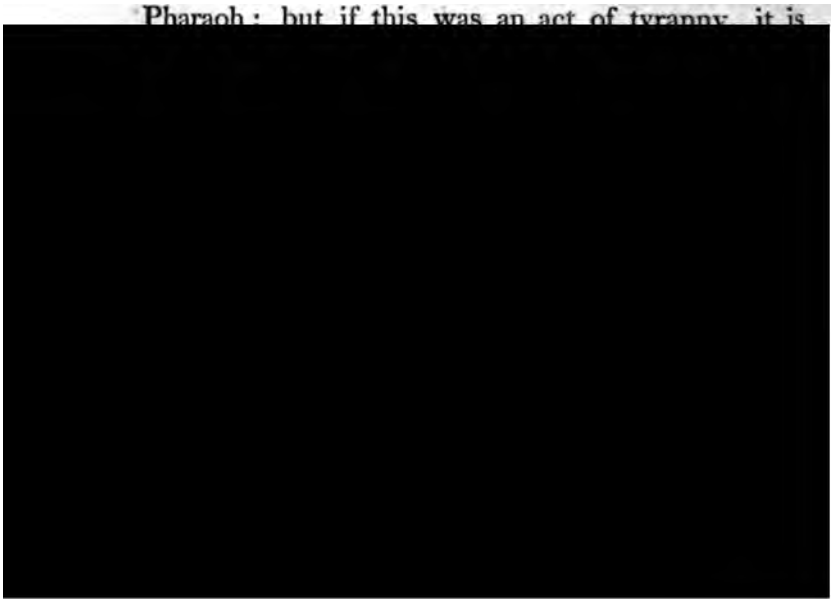
Our author, by endeavouring farther to illustrate the patriarchal power, destroys it, and cannot deny to any man the right which he acknowledges to have been in Ishmael and Esau. But if every man hath a right of setting up for himself with his family, or before he has any, he cannot but have a right of joining with others if he pleases. (As his joining or not joining with others, and the choice of those others, depends upon his own will, he cannot but have a right of judging upon what conditions it is good for him to enter into such a society, as must necessarily hinder him from exercising the right which he has originally in himself. But as it cannot be imagined, that men should generally put such fetters upon themselves, unless it were in expectation of a greater good that was thereby to accrue to them, no more can be required to prove, that they do voluntarily enter into these societies, institute them for their own good, and prescribe such rules and forms to them as best please themselves, without giving account to any. But if every man be free till he enter into such a society as he chuseth for his own good, and those

societies may regulate themselves as they think fit, no more can be required to prove the natural equality in which all men are born, and continue, till they resign it as into a common stock, in such measure as they think fit for the constituting of societies for their own good, which I assert, and our author denies.

SECTION XII.

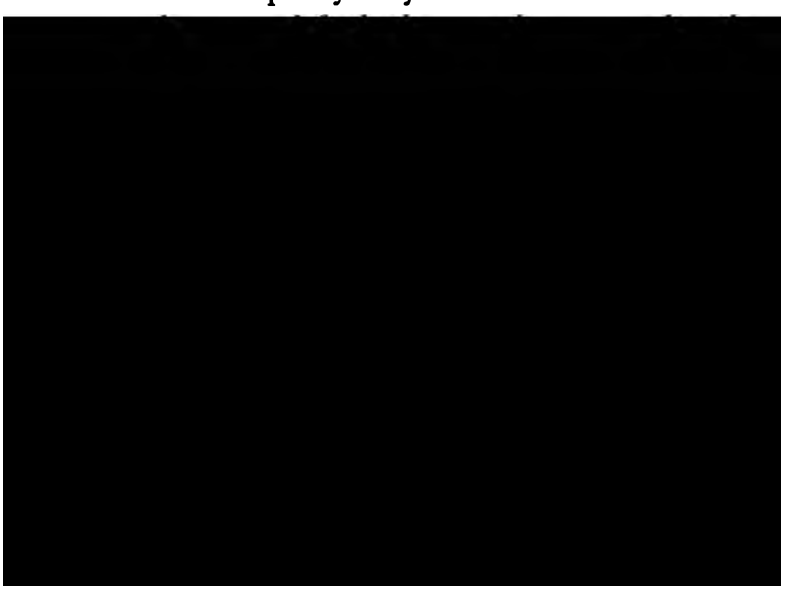
THERE WAS NO SHADOW OF A PATERNAL KINGDOM AMONGST THE HEBREWS, NOR PRECEPT FOR IT.

OUR author is so modest to confess, that Jacob's kingdom, consisting of seventy-two persons, was swallowed up by the power of the greater monarch Pharaoh: but if this was an act of tyranny, it is



into his hands, or into his heirs? If he was hard to be found in a people of one kindred, but four degrees removed from Jacob their head, who were exact in observing genealogies, how can we hope to find him after so many thousand years, when we do not so much as know from whom we are derived? or rather how comes that right, which is eternal and universal, to have been nipped in the bud, and so abolished before it could take any effect in the world, as never to have been heard of amongst the Gentiles, nor the people of God, either before or after the captivity, from the death of Jacob to this day; this I assert, and I give up the cause, if I do not prove it. To this end I begin with Moses and Aaron, the first rulers of the people, who were neither of the eldest tribe according to birth, nor the disposition of Jacob, if he did, or could have given it to any; nor were they of the eldest line of their own tribe; and even between them the superiority was given to Moses, who was the younger, as it is said, "I have made thee a god to Pharaoh, and Aaron thy brother shall be thy prophet." If Moses was a king, as our author says, but I deny, and shall hereafter prove, the matter is worse: he must have been an usurper of a most unjust dominion over his brethren; and this patriarchal power, which by the law of God was to be perpetually fixed in his descendants, perished with him, and his sons continued in an obscure rank amongst the Levites. Joshua of the tribe of Ephraim succeeded him; Othniel was of Judah, Ehud of Benjamin, Barak of Nap-

thalim, and Gideon of Manasseh. The other judges were of several tribes; and they being dead, their children lay hid amongst the common people, and we hear no more of them. The first king was taken out of the least family of the least and youngest tribe. The second, whilst the children of the first king were yet alive, was the youngest of eight sons of an obscure man in the tribe of Judah: Solomon, one of his youngest sons, succeeded him: ten tribes deserted Rehoboam, and by the command of God set up Jeroboam to be their king. The kingdom of Israel, by the destruction of one family, passed into another: that of Judah by God's peculiar promise continued in David's race till the captivity; but we know not that the eldest son was ever preferred, and have no reason to promise it. David, their most reverenced king, left no precept for it, and gave an example to the contrary: he did not set up the eldest, but the wisest. After the captivity they who had most wisdom



Saul, David, and Solomon could never have been kings; the right failing in them, their descendants could inherit none from them; and the others after the captivity were guilty of the like injustice.

Now as the rule is not general, to which there is any one just exception, there is not one of these examples that would not overthrow our author's doctrine: if one deviation from it were lawful, another might be, and so to infinity. But the utmost degree of impudent madness to which perhaps any man in the world hath ever arrived, is to assert that to be universal and perpetual, which cannot be verified by any one example to have been in any place of the world, nor justified by any precept.

If it be objected, that all these things were done by God's immediate disposition: I answer, that it were an impious madness to believe, that God did perpetually send his prophets to overthrow what he had ordained from the beginning, and as it were in spite to bring the minds of men into extricable confusion and darkness; and by particular commands to overthrow his universal and eternal law. But to render this point more clear, I desire it may be considered, that we have but three ways of distinguishing between good and evil:

I. When God by his word reveals it to us.

II. When by his deeds he declareth it: because that which he does is good, as that which he says is true.

III. By the light of reason; which is good, inasmuch as it is from God.

And first: It cannot be said we have an explicit word for that continuance of the power in the eldest, for it appears not: and having none, we might conclude it to be left to our liberty. For it agrees not with the goodness of God to leave us in a perpetual ignorance of his will in a matter of so great importance; nor to have suffered his own people, or any other, to persist, without the least reproof or admonition, in a perpetual opposition to it, if it had displeased him.

To the second: The dispensations of his providence, which are the emanations of his will, have gone contrary to this pretended law. There can therefore be no such thing; for God is constant to himself: his works do not contradict his word; and both of them do equally declare to us that which is good.

weight of so great a charge; and, like a good shepherd, to lead the people to good. "*Detur digniori*" is the voice of reason: and, that we may be sure "*detur seniori*" is not so, Solomon tells us, "that a wise child is better than an old and foolish king." But if this pretended right do not belong to him that is truly the eldest, nothing can be more absurd than a fantastical pretence to a right deduced from him that is not so. Now, lest I should be thought to follow my own inventions, and call them reason, or the light of God in us, I desire it may be observed, that God himself has ever taken this method. When he raised up Moses to be the leader of his people, he endowed him with the most admirable gifts of his Spirit that ever he bestowed upon a man: when he chose seventy men to assist him, he endowed them with the same Spirit. Joshua had no other title to succeed him than the like evidence of God's presence with him. When the people, through sin, fell into misery, he did not seek out their descendants, and such as boasted in a prerogative of birth; but shewed whom he designed for their deliverer, by bestowing such gifts upon him as were required for the performance of his work; and never failed of doing this, till that miserable, sinful people, rejecting God and his government, desired that which was in use amongst their accursed neighbours, that they might be as like to them in the most shameful slavery to man, as in the worship of idols set up against God.

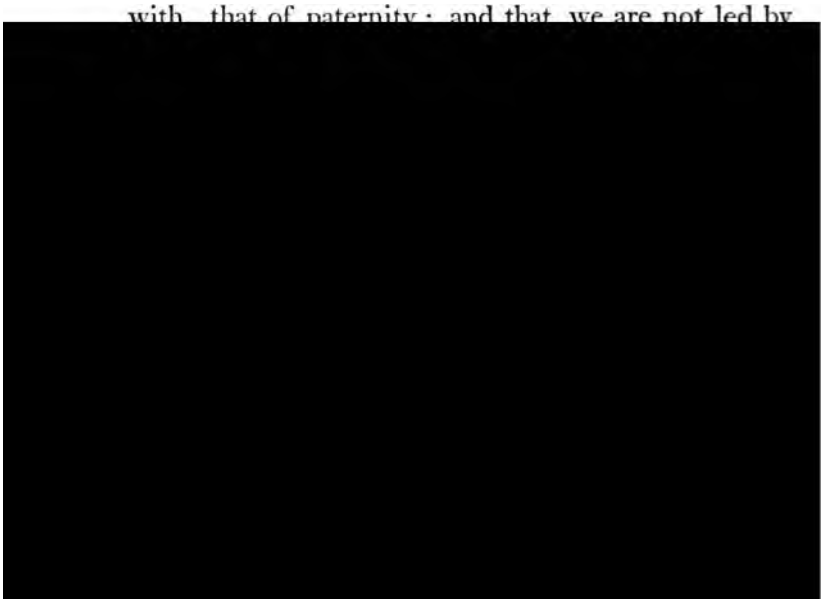
But if this pretended right be grounded upon no

word or work of God, nor the reason of man, it is to be accounted a mere figment, that hath nothing of truth in it.

SECTION XIII.

IF THE PATERNAL RIGHT HAD INCLUDED DOMINION, AND WAS TO BE TRANSFERRED TO A SINGLE HEIR, IT MUST PERISH IF HE WERE NOT KNOWN; AND COULD BE APPLIED TO NO OTHER PERSON.

HAVING shewed that the first kings were not fathers, nor the first fathers kings; that all the kings of the Jews and Gentiles mentioned in scripture came in upon titles different from, and inconsistent with that of paternity; and that we are not led by



transmitted to their eldest sons, it must necessarily perish; since the generations of men are so confused, that no man knows his own original; and consequently this heir is no where to be found; for it is a folly for a man to pretend to an inheritance, who cannot prove himself to be the right heir. If this be not true, I desire to know from which of Noah's sons the kings of England, France, or Spain, do deduce their original; or what reason they can give, why the title to dominion, which is fancied to be in Noah, did rather belong to the first of their respective races that attained to the crowns they now enjoy, than to the meanest peasant of their kingdoms; or how that can be transmitted to them, which was not in the first. We know, that no man can give what he hath not; that if there be no giver, there is no gift; if there be no root, there can be no branch; and that the first point failing, all that should be derived from it must necessarily fail.

Our author, who is good at resolving difficulties, shews us an easy way out of this strait. "'Tis true," says he, "all kings are not natural parents of their subjects; yet they either are, or are to be reputed, the next heirs to those first progenitors, who were at first the natural parents of the whole people, and in their right succeed to the exercise of the supreme jurisdiction: and such heirs are not only lords of their own children, but also of their brethren, and all those that were subject to their father, &c. By this means it comes to pass, that

many a child succeeding a king hath the right of a father over many a grey-headed multitude, and hath the title of *pater patriæ*."

An assertion comprehending so many points, upon which the most important rights of all mankind do depend, might deserve some proof; but he, being of opinion we ought to take it upon his credit, doth not vouchsafe to give us so much as the shadow of any. Nevertheless, being unwilling either crudely to receive, or rashly to reject it, I shall take the liberty of examining the proposition, and hope I may be pardoned, if I dwell a little more than ordinary upon that which is the foundation of his work.

We are beholden to him for confessing modestly, that all kings are not the natural fathers of their people, and sparing us the pains of proving, that the kings of Persia, who reigned from the Indies to the Hellespont, did not beget all the men that lived in those countries; or that the kings of France and Spain, who began to reign before they were five years old, were not the natural fathers of the nations under them. But if all kings are not fathers, none are, as they are kings: if any one is, or ever was, the rights of paternity belong to him, and to no other who is not so also. This must be made evident; for matters of such importance require proof, and ought not to be taken upon supposition. If Filmer therefore will pretend, that the right of father belongs to any one

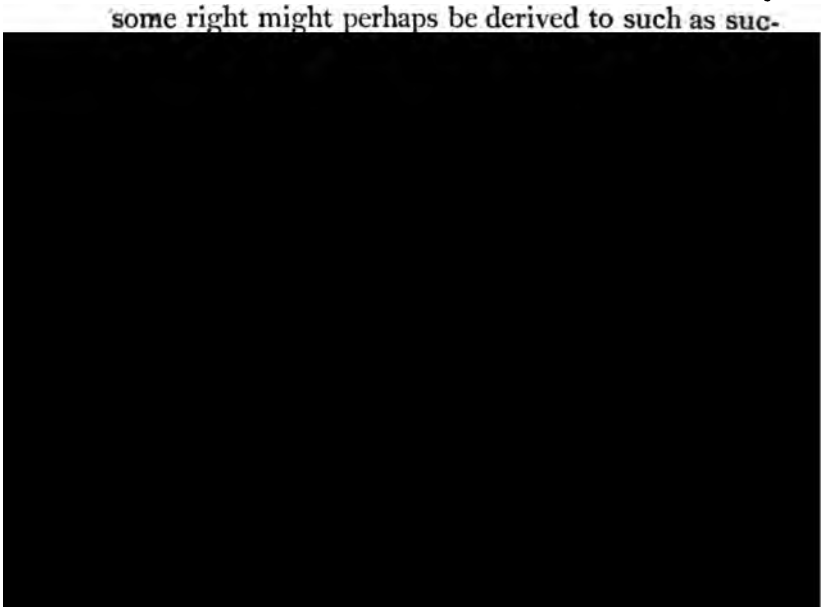
king, he must prove that he is the father of his people; for otherwise it doth not appertain to him; he is not the man we seek.

It is no less absurd to say, he is to be reputed heir to the first progenitor: for it must be first proved, that the nation did descend from one single progenitor without mixture of other races: that this progenitor was the man to whom Noah (according to Filmer's whimsical division of Asia, Europe, and Africa, among his sons) did give the land now inhabited by that people: that this division so made was not capable of subdivisions; and that this man is by a true and uninterrupted succession descended from the first and eldest line of that progenitor; and all fails, if every one of these points be not made good. If there never was any such man who had that right, it cannot be inherited from him. If by the same rule that a parcel of the world was alloted to him, that parcel might be subdivided among his children as they increased, the subdivisions may be infinite, and the right of dominion thereby destroyed. If several nations inhabit the same land, they owe obedience to several fathers: that which is due to their true father, cannot be rendered to him that is not so; for he would by that means be deprived of the right which is inseparably annexed to his person: and lastly, whatsoever the right of an heir may be, it can belong only to him that is heir.

Lest any should be seduced from these plain truths by frivolous suggestions, it is good to consider, that

the title of "*pater patriæ*," with which our author would cheat us, hath no relation to the matters of right, upon which we dispute. It is a figurative speech, that may have been rightly enough applied to some excellent princes on account of their care and love to their people, resembling that of a father to his children; and can relate to none but those who had it. No man that had common sense, or valued truth, did ever call Phalaris, Dionysius, Nabis, Nero, or Caligula, fathers of their countries; but monsters, that to the utmost of their power endeavoured their destruction: which is enough to prove that sacred name cannot be given to all, and in consequence to none but such as by their virtue, piety, and good government, do deserve it.

These matters will yet appear more evident, if it be considered, that though Noah had reigned as a king; that Zoroaster, as some suppose, was Ham, who reigned over his children; and that thereby some right might perhaps be derived to such as suc-

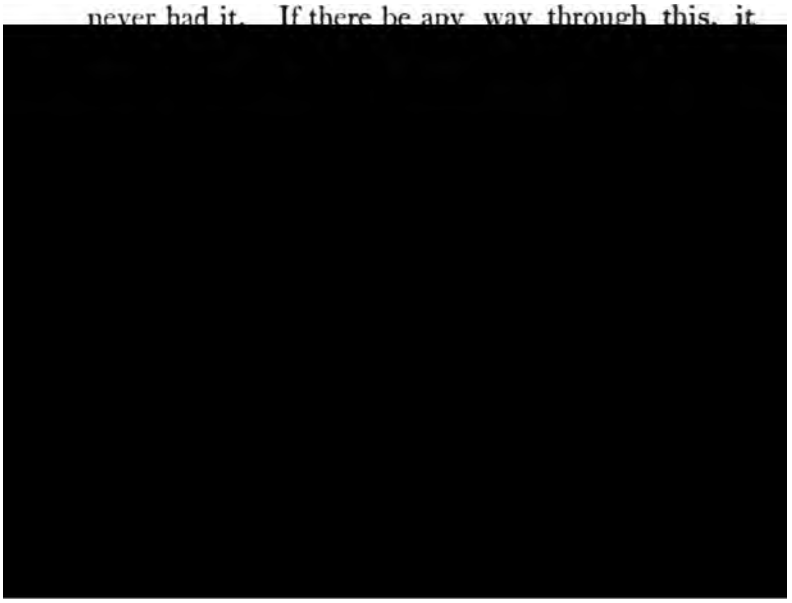


power, and the actions of Nimrod, Ninus, and others, who were kings in their times, shew they did not reign in the right of fathers, but were set up in a direct opposition to it, the titles of the first kings were not from paternity, nor consistent with it.

Our author therefore, who should have proved every point, doth neither prove any one, nor assert that which is agreeable to divine or human story, as to matter of fact; and as little conformable to common sense. It does not only appear contrary to his general proposition, that all governments have not begun with the paternal power; but we do not find that any ever did. They who, according to his rules, should have been lords of the whole earth, lived and died private men, whilst the wildest and most boisterous of their children commanded the greatest part of the then inhabited world, not excepting even those countries where they spent and ended their days; and instead of entering upon the government by the right of fathers, or managing it as fathers, they did, by the most outrageous injustice, usurp a violent domination over their brethren and fathers.

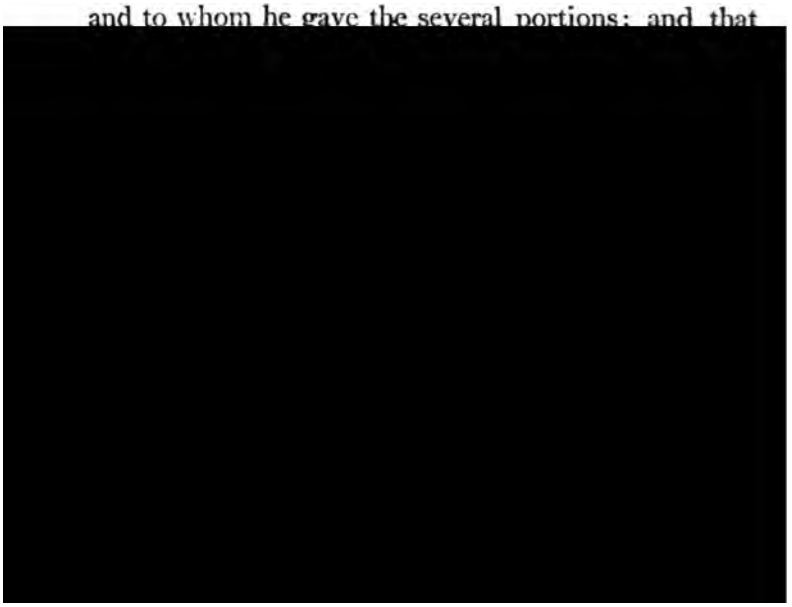
It may easily be imagined what the right is, that could be thus acquired and transmitted to their successors. Nevertheless our author says, "all kings either are or ought to be reputed next heirs, &c." But why reputed, if they were not? How could any of the accursed race of Ham be reputed father of Noah or Shem, to whom he was to be a ser-

vant? How could Nimrod and Ninus be reputed fathers of Ham, and of those whom they ought to have obeyed? Can reason oblige me to believe that which I know to be false? Can a lie, that is hateful to God and good men, not only be excused, but enjoined, when (as he will perhaps say) it is for the king's service? Can I serve two masters, or, without the most unpardonable injustice, repute him to be my father who is not my father; and pay the obedience that is due to him who did beget and educate me, to one from whom I never received any good? If this be so absurd, that no man dares affirm it in the person of any, it is as preposterous in relation to his heirs: for Nimrod the first king could be heir to no man as king, and could transmit to no man a right which he had not. If it was ridiculous and abominable to say, that he was father of Cush, Ham, Shem, and Noah, it is as ridiculous to say, he had the right of father, if he was not their father; or that his successor inherited it from him, if he never had it. If there be any way through this, it



men might be kings, without having more power than others; for Cush, Ham, and Noah, were his elders and progenitors in the direct line; and all the sons of Shem and Japheth, and their descendants in the collaterals, were to be preferred before him; and he could have no right at all, that was not directly contrary to those principles which, our author says, are grounded upon the eternal and indispensible laws of God and nature. The like may be said of the seventy-two heads of colonies, which (following, as I suppose, Sir Walter Raleigh) he says went out to people the earth, and whom he calls kings: for, according to the same rule, Noah, Shem, and Japheth, with their descendants, could not be of the number; so that neither Nimrod, nor the others that established the kingdoms of the world, and from whence he thinks all the rest to be derived, could have any thing of justice in them, unless it were from a root altogether inconsistent with his principles. They are therefore false, or the establishments before mentioned could have no right. If they had none, they cannot be reputed to have any; for no man can think that to be true, which he knows to be false: having none, they could transmit none to their heirs and successors. And if we are to believe, that all the kingdoms of the earth are established upon this paternal right; it must be proved, that all those, who in birth ought to have been preferred before Nimrod, and the seventy-two, were extirpated; or that the first and true heir of Noah did afterwards abolish all these unjust usurpations; and, making himself master of

the whole, left it to his heirs, in whom it continues to this day. When this is done, I will acknowledge the foundation to be well laid, and admit of all that can be rightly built upon it; but if this fails, all fails: the poison of the root continues in the branches. If the right heir be not in possession, he is not the right who is in possession: if the true heir be known, he ought to be restored to his right: if he be not known, the right must perish: that cannot be said to belong to any man, if no man knows to whom it belongs, and can have no more effect than if it were not. This conclusion will continue unmoveable, though the division into seventy-two kingdoms were allowed; which cannot be without destroying the paternal power, or subjecting it to be subdivided into as many parcels as there are men, which destroys regality; for the same thing may be required in every one of the distinct kingdoms, and others derived from them. We must know who was the true heir of Noah, that recovered all: how, when, and to whom he gave the several portions; and that

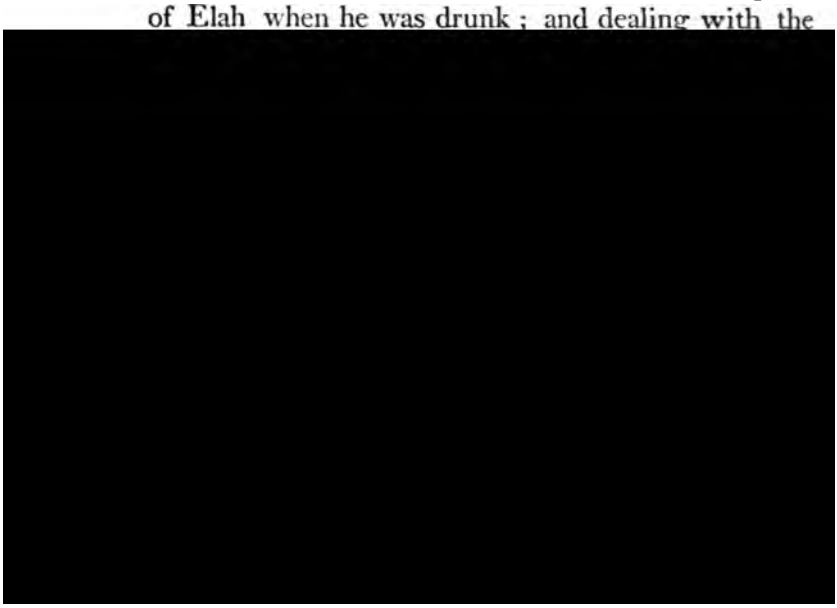


....degenerated from that reason which distinguisheth men from beasts. Though it may be fit to use some ceremonies, before a man be admitted to practice physic, or set up a trade, it is his own skill that makes him a doctor, or an artificer; and others do but declare it. An ass will not leave his stupidity, though he be covered with scarlet; and he that is by nature a slave, will be so still, though a crown be put upon his head: and it is hard to imagine a more violent inversion of the laws of God and nature, than to raise him to the throne, whom nature intended for the chain; or to make them slaves to slaves, whom God hath endowed with the virtues required in kings. Nothing can be more preposterous, than to impute to God the frantic domination which is often exercised by wicked, foolish and vile persons, over the wise, valiant, just, and good; or to subject the best to the rage of the worst. If there be any family therefore in the world, that can by the law of God and nature, distinct from the ordinance of man, pretend to an hereditary right of dominion over any people, it must be one that never did, and never can produce any person that is not free from all the infirmities and vices that render him unable to exercise the sovereign power; and is endowed with all the virtues required to that end; or at least a promise from God, verified by experience, that the next in blood shall ever be able and fit for that work. But since we do not know, that any such hath yet appeared in the world, we have no reason to believe, that there is, or ever was any such; and consequently none upon whom God hath

conferred the rights that cannot be exercised without them.

If there was no shadow of a paternal right in the institution of the kingdoms of Saul and David, there could be none in those that succeeded. Rehoboam could have no other than from Solomon: when he reigned over two tribes, and Jeroboam over ten, it is not possible, that both of them could be the next heir of their last common father Jacob; and it is absurd to say, that ought to be reputed, which is impossible: for our thoughts are ever to be guided by truth, or such an appearance of it, as doth persuade or convince us.

The same title of father is yet more ridiculously or odiously applied to the succeeding kings. Baasha had no other title to the crown, than by killing Nadab the son of Jeroboam, and destroying his family. Zimri purchased the same honour by the slaughter of Elah when he was drunk; and dealing with the



plain English, is no less than to say, that whosoever kills a king, and invades a crown, though the act and means of accomplishing it be never so detestable, does thereby become father of his country, and heir of all the divine privileges annexed to that glorious inheritance. And though I cannot tell whether such a doctrine be more sottish, monstrous, or impious, I dare affirm, that if it were received, no king in the world could think himself safe in his throne for one day: they are already encompassed with many dangers; but lest pride, avarice, ambition, lust, rage, and all the vices that usually reign in the hearts of worldly men, should not be sufficient to invite them perpetually to disturb mankind, through the desire of gaining the power, riches, and splendor that accompany a crown, our author proposes to them the most sacred privileges, as a reward of the most execrable crimes. He that was stirred up only by the violence of his own nature, thought that a kingdom could never be bought at too dear a rate:

> ....." Pro regno velim
> " Patriam, penates, conjugem flammis dare:
> " Imperia precio quolibet constant bene."
>
> Senec. Theb. vers. ult.

But if the sacred character of God's anointed or vicegerent, and father of a country, were added to the other advantages that follow the highest fortunes; the most modest and just men would be filled with fury, that they might attain to them. Nay, it may be, even the best would be the most forward in con-

spiring against such as reigned: they who could not be tempted with external pleasures, would be most in love with divine privileges; and since they should become the sacred ministers of God, if they succeeded, and traitors or rogues only if they miscarried, their only care would be so to lay their designs, that they might be surely executed. This is a doctrine worthy of Filmer's invention, and Heylin's approbation; which, being well weighed, will shew to all good and just kings how far they are obliged to those, who, under pretence of advancing their authority, fill the minds of men with such notions as are so desperately pernicious to them.

SECTION XV.

THE ANCIENTS CHOSE THOSE TO BE KINGS, WHO

that nations, who did not know their own original, and who, probably, if not certainly, came of several stocks, never put themselves to the trouble of seeking one who by his birth deserved to be preferred before others; and various changes happening in all kingdoms (whereby in process of time the crowns were transported into divers families, to which the right of inheritance could not without the utmost impiety and madness be imputed) such a fancy certainly could only enter into the heads of fools; and we know of none so foolish to have harboured it.

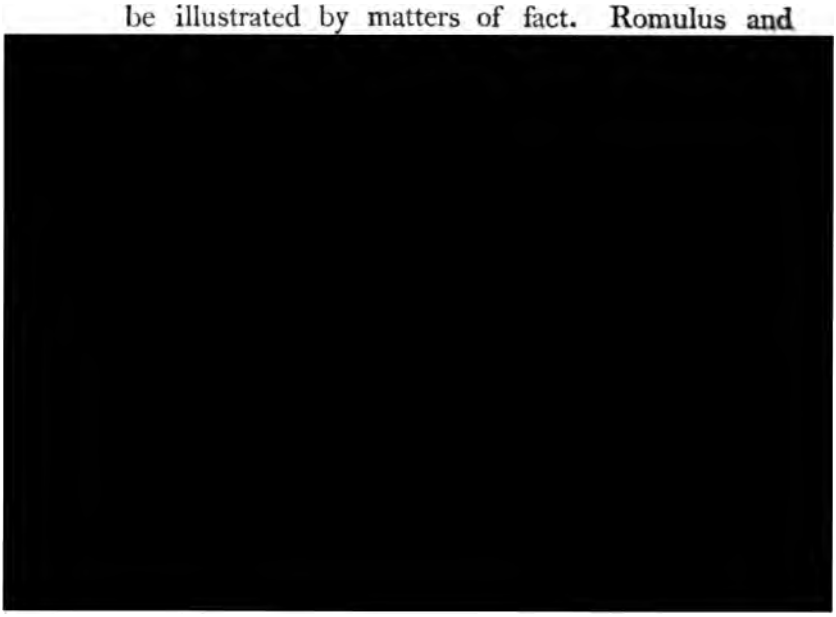
The Grecians, amongst others who followed the light of reason, knew no other original title to the government of a nation than that wisdom, valour, and justice which was beneficial to the people. These qualities gave beginning to those governments, which we call "*heroum regna;*" and the veneration paid to such as enjoyed them, proceeded from a grateful sense of the good received from them: they were thought to be descended from the gods, who in virtue and beneficence surpassed other men. The same attended their descendants, till they came to abuse their power, and by their vices shewed themselves like to, or worse than others. Those nations did not seek the most ancient, but the most worthy; and thought such only worthy to be preferred before others, who could best perform their duty. The Spartans knew, that Hercules and Achilles were not their fathers; for they were a nation before either of them were born; but thinking their children might be like to them in valour,

they brought them from Thebes and Epirus to be their kings. If our author be of another opinion, I desire to know, whether the Heraclidæ, or the Æacidæ were, or ought to be, reputed fathers of the Lacedemonians; for if the one was, the other was not.

The same method was followed in Italy; and they who esteemed themselves aborigines,

> ....." Qui rupto robore nati,
> " Compositive luto, nullos habuere parentes."
> Juven. Sat. 6. l. 13.

could not set up one to govern them under the title of parent. They could pay no veneration to any man under the name of a common father, who thought they had none; and they who esteemed themselves equal, could have no reason to prefer any one, unless he were distinguished from others by the virtues that were beneficial to all. This may be illustrated by matters of fact. Romulus and

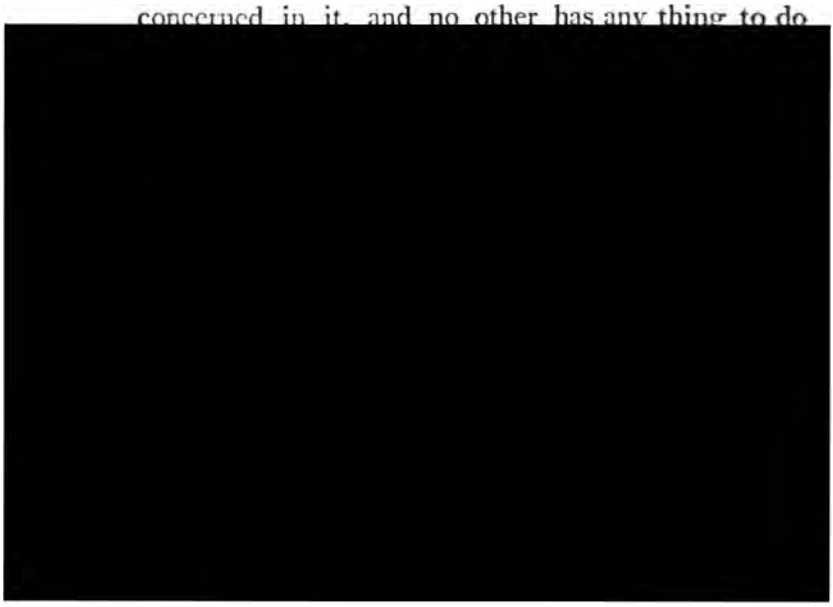


slain him.) They could not be his heirs whilst he lived, and were not when he died: the government of the Latins continued at Alba, and Romulus reigned over those who joined with him in building Rome. The power not coming to him by inheritance, must have been gained by force, or conferred upon him by consent: it could not be acquired by force; for one man could not force a multitude of fierce and valiant men, as they appear to have been. It must therefore have been by consent; and when he aimed at more authority than they were willing to allow, they slew him. He being dead, they fetched Numa from among the Sabines: he was not their father, nor heir to their father, but a stranger; not a conqueror, but an unarmed philosopher. Tullus Hostilius had no other title: Ancus Martius was no way related to such as had reigned. The first Tarquin was the son of a banished Corinthian. Servius Tullus came to Rome in the belly of his captive mother, and could inherit nothing but chains from his vanquished father. Tarquin* the proud, murdered him, and first took upon himself the title of king, "*sine jussu populi.*" If this murder and usurpation be called a conquest, and thought to create a right, the effect will be but small: the conqueror was soon conquered, banished, and his sons slain, after which we hear no more of him, or his descendants. Whatsoever he gained from Servius, or the people, was soon lost, and did accrue to those who conquered and ejected him; and they might retain what was their own, or confer it upon

* T. liv. L. i. c. 49.

one or more, in such manner and measure as best pleased themselves. If the regal power, which our author says was in the consuls, could be divided into two parts, limited to a year, and suffer such restrictions as the people pleased to lay upon it, they might have divided it into as many parcels, and put it into such form as best suited with their inclinations; and the several magistracies which they did create for the exercise of the kingly, and all other powers, shews that they were to give account to none but themselves.

The Israelites, Spartans, Romans, and others, who thus framed their governments according to their own will, did it not by any peculiar privilege, but by a universal right conferred upon them by God and nature: they were made of no better clay than others: they had no right, that does not as well belong to other nations; that is to say, the constitution of every government is referred to those who are concerned in it, and no other has any thing to do

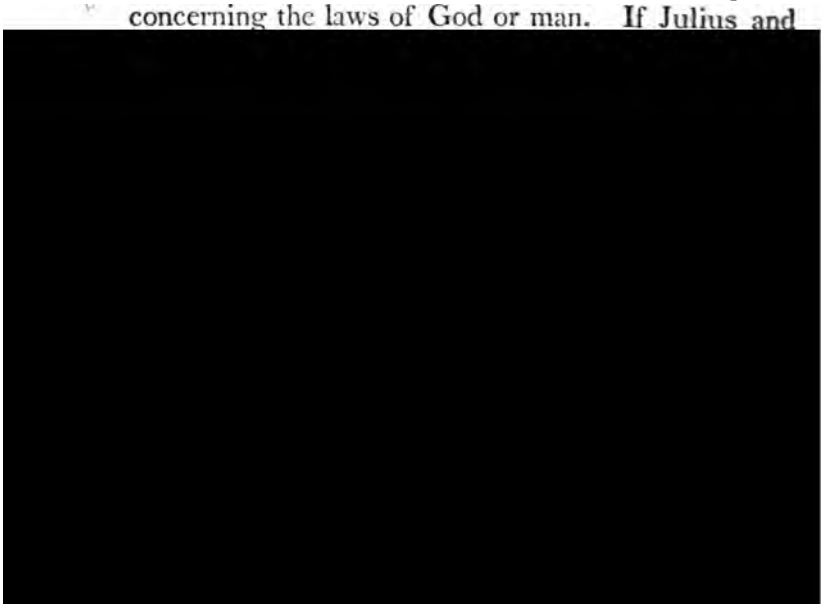


manæ & Græcæ anarchiæ fautores." But it is strange that this anarchy, which he resembles to a chaos, full of darkness and confusion, that can have no strength or regular action, should overthrow all the monarchies that came within their reach, "if (as our author says) the best order, greatest strength, and most stability, be in them." It must therefore be confessed, that these governments are, in their various forms, rightly instituted by several nations, without any regard to inheritance; or that these nations have had no governments and were more strong, virtuous and happy without government than under it, which is most absurd.

But if governments arise from the consent of men, and are instituted by men according to their own inclinations, they do therein seek their own good; for the will is ever drawn by some real good, or the appearance of it. This is that which man seeks by all the regular or irregular motions of his mind. Reason and passion, virtue and vice, do herein concur, though they differ vastly in the objects in which each of them thinks this good to consist. A people therefore that sets up kings, dictators, consuls, pretors, or emperors, does it not that they may be great, glorious, rich or happy, but that it may be well with themselves and their posterity. This is not accomplished simply by setting one, a few or more men in the administration of powers, but by placing the authority in those who may rightly perform their office. This is not every man's work: valour, integrity, wisdom, industry, experience,

and skill are required for the management of those military and civil affairs that necessarily fall under the care of the chief magistrates. He or they therefore may reasonably be advanced above their equals, who are most fit to perform the duties belonging to their stations, in order to the public good, for which they were instituted.

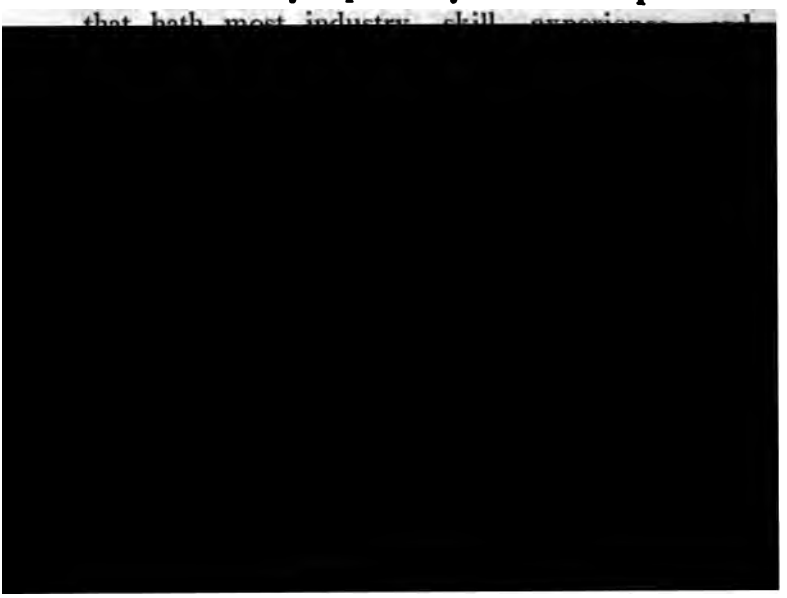
Marius, Sylla, Catalina, Julius, or Octavius Cæsar, and all those who by force or fraud usurped a dominion over their brethren, could have no title to this right; much less could they become fathers of the people, by using all the most wicked means that could well be imagined to destroy them; and not being regularly chosen for their virtues, or the opinion of them, nor preferred on account of any prerogative that had been from the beginning annexed to their families, they could have no other right than occupation could confer upon them. If this can confer a right, there is an end of all disputes concerning the laws of God or man. If Julius and



and a few corrupted soldiers, could invest Caligula with the same. A vile rascal, pulling Claudius out by the heels from behind the hangings where he had hid himself, could give it to him. A dish of mushrooms well seasoned by the infamous strumpet his wife, and a potion prepared for Brittanicus by Locusta, could transfer it to her son, who was a stranger to his blood. Galba became heir to it, by driving Nero to despair and death. Two common soldiers, by exciting his guards to kill him, could give a just title to the empire of the world to Otho, who was thought to be the worst man in it. If a company of villains in the German army, thinking it as fit for them as others, to create a father for mankind, could confer the dignity upon Vitellius; and if Vespasian, causing him to be killed, and thrown into a jakes less impure than his life, did inherit all the glorious and sacred privileges belonging to that title; it is in vain to inquire after any man's right to any thing.

If there be such a thing as right and wrong to be examined by men, and any rule set whereby the one may be distinguished from the other, these extravagancies can have no effect of right. Such as commit them, are not to be looked upon as fathers; but as the most mortal enemies of their respective countries. No right is to be acknowledged in any, but such as is conferred upon them by those who have the right of conferring, and are concerned in the exercise of the power, upon such conditions as

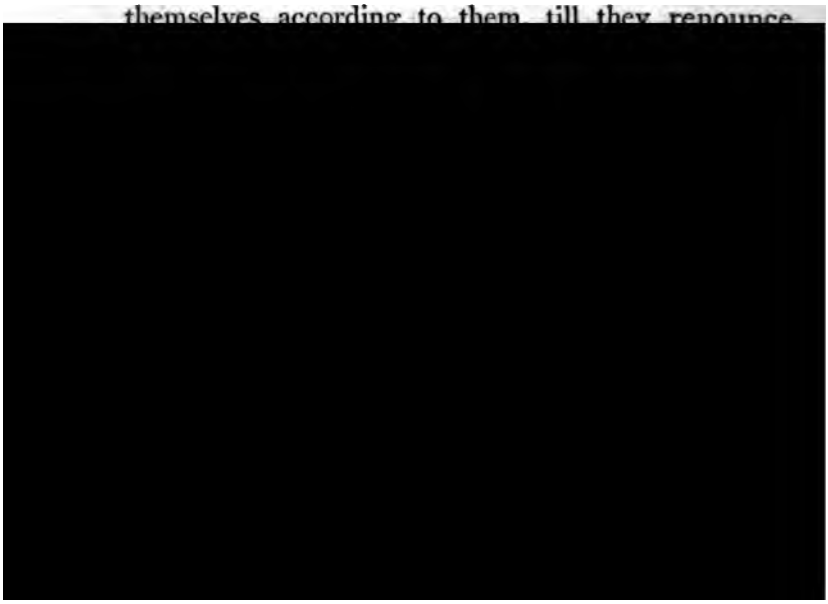
best please themselves. No obedience can be due to him or them, who have not a right of commanding. This cannot reasonably be conferred upon any that are not esteemed willing and able rightly to excute it. This ability to perform the highest works that come within the reach of men; and integrity of will not to be diverted from it by any temptation, or consideration of private advantages, comprehending all that is most commendable in man; we may easily see, that whensoever men act according to the law of their own nature, which is reason, they can have no other rule to direct them in advancing one above another, than the opinion of a man's virtue and ability, best to perform the duty incumbent upon him; that is, by all means to procure the good of the people committed to his charge. He is only fit to conduct a ship, who understands the art of a pilot: when we are sick, we seek the assistance of such as are best skilled in physic: the command of an army is prudently conferred upon him



will not procure that good, destroys his own being, and becomes like to other men. In matters of the greatest importance "*detur digniori*," is the voice of nature; all her most sacred laws are perverted, if this be not observed in the disposition of the governments of mankind: but all is neglected and violated, if they are not put into the hands of such as excel in all manner of virtues; for they only are worthy of them, and they only can have a right who are worthy, because they only can perform the end for which they are instituted. This may seem strange to those who have their heads infected with Filmer's whimsies; but to others so certainly grounded upon truth, that Bartholomew de las Casas,* Bishop of Chiapa, in a treatise written by him, and dedicated to the emperor Charles the 5th, concerning the Indies, makes it the foundation of all his discourse, that notwithstanding his grant of all those countries from the Pope, and his pretensions to conquest, he could have no right over any of those nations, unless he did in the first place, as the principal end, regard their good: "The reason," says he, "is, that regard is to be had to the princi-

* La razon es porque siempre se ha de tener respeto al fin y causa final, por el qual, el tal supremo y universal sennor se les pone, que es su bien y utilitad; y a que no se le convierte el tal supremo sennorio in danno, pernicie y destruycion. Porque si assi fuesse, no ay que dudar, que non desde entonces inclusivame te seria injusto, Tyrannico y iniquo al senorio, come mas se enderezasse al proprio interesse y provecho del sennor, que al bien y utilitad comun de los subditos; lo qual de la razon natural y de todas las leyes humanas y divinas es abhorrecido y abhorrecible. Bar. de las Casas, dester. de las Indias, pag. 111.

pal end and cause for which a supreme or majestical lord is set over them, which is their good and profit, and not that it should turn to their destruction and ruin; for if that should be, there is no doubt but from thenceforward that power would be tyrannical and unjust, as tending more to the interest and profit of that lord, than to the public good and profit of the subjects; which, according to natural reason, and the laws of God and man, is abhorred, and deserves to be abhorred." And in another place, speaking of the governors, who, abusing their power, brought many troubles and vexations upon the Indians, he says,* "they had rendered his majesty's government intolerable, and his yoke insupportable, tyrannical, and most justly abhorred." I do not alledge this through an opinion that a Spanish bishop is of more authority than another man; but to shew, that these are common notions agreed in by all mankind; and that the greatest monarchs do neither refuse to hear them or to regulate themselves according to them, till they renounce

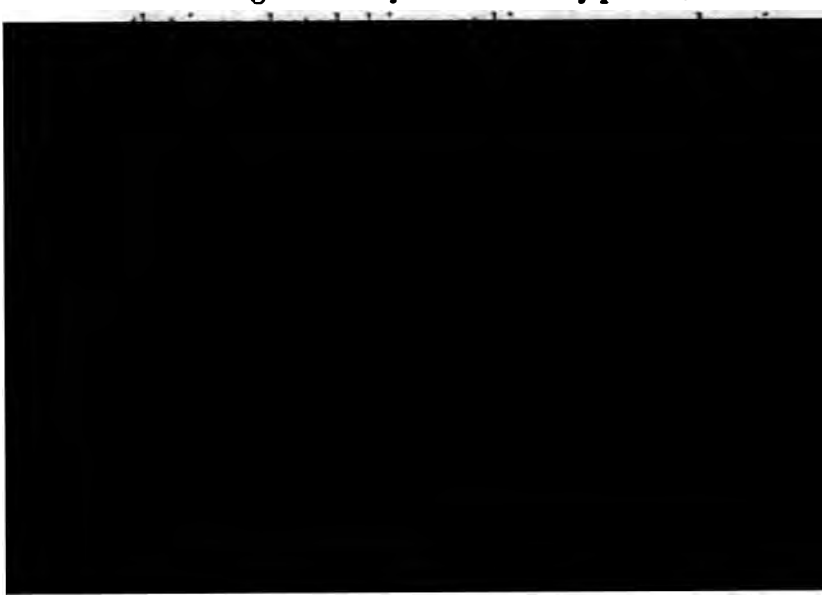


do degenerate into a most unjust and detestable tyranny, so soon as the supreme lord begins to prefer his own interest or profit before the good of his subjects; what shall we say of those who pretend to a right of dominion over free nations, as inseparably united to their persons, without distinction of age or sex, or the least consideration of their infirmities and vices; as if they were not placed in the throne for the good of their people, but to enjoy the honours and pleasures that attend the highest fortune? What name can be fit for those, who have no other title to the places they possess, than the most unjust and violent usurpation, or being descended from those who for their virtues were, by the people's consent, duly advanced to the exercise of a legitimate power; and having sworn to administer it, according to the conditions upon which it was given, for the good of those who gave it, turn all to their own pleasure and profit, without any care of the public? These may be liable to hard censures; but those who use them most gently, must confess, that such an extreme deviation from the end of their institution, annuls it; and the wound thereby given to the natural and original rights of those nations cannot be cured, unless they resume the liberties, of which they have been deprived, and return to the ancient custom of choosing those to be magistrates, who for their virtues best deserve to be preferred before their brethren, and are endowed with those qualities that best enable men to perform the great end of providing for the public safety.

SECTION XVI.

GOD, HAVING GIVEN THE GOVERNMENT OF THE WORLD TO NO ONE MAN, NOR DECLARED HOW IT SHOULD BE DIVIDED, LEFT IT TO THE WILL OF MAN.

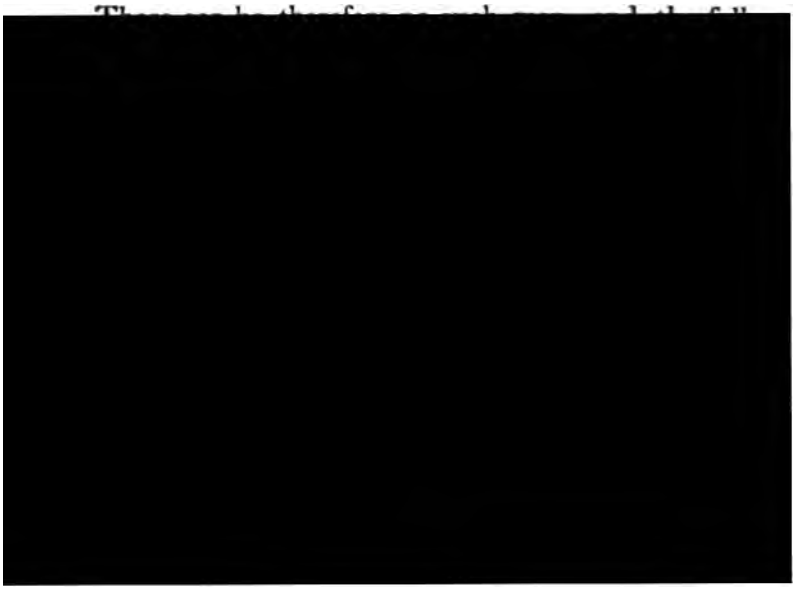
Our author's next inquiry is, "What becomes of the right of fatherhood 'in case the crown should escheat for want of an heir? Whether it doth not escheat to the people?' His answer is, 'It is but the negligence or ignorance of the people, to lose the knowledge of the true heir,' &c. And a little below, the power is not devolved to the multitude: no; the kingly power escheats on independent heads of families: all such prime heads have power to consent in the uniting, or conferring their fatherly right of sovereign authority on whom they please; and he



the multitude of ignorance or negligence, in not knowing this heir, he ought to have informed us, how it may be possible to know him, or what it would avail us if we did know him: for it is in vain to know to whom a right belongs, that never was, and never can be executed. But we may go farther, and affirm, that as the universal right must have been in Noah and Shem (if in any) who never exercised it, we have reason to believe there never was any such thing; and, having proved from scripture and human history, that the first kingdoms were set up in a direct opposition to this right, by Nimrod and others, he that should seek and find their heirs, would only find those, who, by a most accursed wickedness, had usurped and continued a dominion over their fathers, contrary to the laws of God and nature; and we should neither be more wise, nor more happier than we are, though our author should furnish us with certain and authentic genealogies by which we might know the true heirs of Nimrod, and the seventy-two kings that went from Babylon, who, as he supposes, gave beginning to all the kingdoms of the earth.

Moreover, if the right be universal, it must be in one; for the universe being but one, the whole right of commanding it cannot at the same time be in many, and proceed from the ordinance of God, or of man. It cannot proceed from the ordinance of God; for he doth nothing in vain: he never gave a right that could not be executed: no man can govern that which he does not so much as know: no man

did ever know all the world; no man therefore did or could govern it: and none could be appointed by God to do that which is absolutely impossible to be done; for it could not consist with his wisdom. We find this in ourselves. It were a shame for one of us poor, weak, short-sighted creatures, in the disposal of our affairs, to appoint such a method, as were utterly ineffectual for the preservation of our families, or destructive to them; and the blasphemy of imputing to God such an ordinance, as would be a reproach to one of us, can suit only with the wicked and impudent fury of such as our author, who delights in monsters. This also shews us, that it cannot be from men; one, or a few, may commit follies; but mankind does not universally commit, and perpetually persist in any; they cannot therefore, by a general and permanent authority, enact that which is utterly absurd and impossible; or if they do, they destroy their own nature, and can no longer deserve the name of reasonable creatures.



of mankind are so confused, that, unless possibly among Jews, we have reason to believe that there is not a man in the world who knows his own original: it could be of no advantage to us, though we knew that of every one; for the division would be of no value, unless it were at the first rightly made by him who had all authority in himself, (which does no where appear) and rightly deduced to him, who according to that division, claims a right to the parcel he enjoys: and I fear our author would terribly shake the crowns, in which the nations of Europe are concerned, if they should be persuaded to search into the genealogies of their princes, and to judge of their rights according to the proofs they should give of titles rightly deduced by succession of blood from the seventy-two first kings, from whom our author fancies all the kingdoms of the world to be derived.

Besides, though this were done, it would be to no purpose; for the seventy-two were not sent out by Noah; nor was he, or his sons, of that number; but they went or were sent from Babylon, where Nimrod reigned, who, as has been already proved, neither had nor could have any right at all, but was a mighty hunter, even a proud and cruel tyrant, usurping a power to which he had no right, and which was perpetually exercised by him and his successors against God and his people; from whence I may safely conclude, that no right can ever be derived; and may justly presume, it will be denied by none who are of better morals, and of more

sound principles in matters of law and religion than Filmer and Heylin; since it is no less absurd to deduce a right from him that had none, than to expect pure and wholesome waters from a filthy, polluted, and poisonous fountain.

If it be pretended, that some other man since Noah had this universal right, it must either remain in one single person, as his right heir, or be divided. If in one, I desire to know who he is, and where we may find him, that the empire of the world may be delivered to him: but if he cannot be found, the business is at an end, for every man in the world may pretend himself to be the person; and the infinite controversies arising thereupon can never be decided, unless either the genealogies of every one from Noah was extant and proved, or we had a word from heaven, with a sufficient testimony of his mission who announceth it. When this is done, it will be time to consider what kind of obedience is due to this wonderfully happy and glorious person.

If this pretended right be divided, it concerns us to know by whom, when, how, or to whom; for the division cannot be of any value, unless the right was originally in one; that he did exercise this right in making the division; that the parcels into which the world is divided are according to the alotment that was made; and that the persons claiming them by virtue of it are the true heirs of those to whom they were first granted. Many other difficulties may be alledged no less inextricable than these; but this seeming sufficient for the present, I shall not trouble myself with more, promising that, when they shall be removed, I will propose others, or, confessing my errors, yield up the cause.

But if the dominion of the whole world cannot belong to any one man, and every one have an equal title to that which should give it; or if it did belong to one, none did ever exercise it in governing the whole, or dividing it; or, if he did divide it, no man knows how, when, and to whom; so that they who lay claim to any parcels can give no testimony of that division, nor shew any better title than other men derived from their first progenitor, to whom it is said to have been granted; and that we have neither a word, nor the promise of a word from God to decide the controversies arising thereupon; nor any prophet giving testimony of his mission that takes upon him to do it, the whole fabric of our author's patriarchal dominion falls to the ground; and they who propose these doctrines, which, if they were received, would be the root of

perpetual and irreconcilable hatred in every man against every man, can be accounted no less than ministers of the devil, though they want the abilities he has sometimes infused into those who have been employed on the like occasions. And we may justly conclude, that God having never given the whole world to be governed by one man; nor prescribed any rule for the division of it; nor declared where the right of dividing or subdividing that which every man has, should terminate; we may safely affirm, that the whole of it is forever left to the will and discretion of man: we may enter into, form, and continue in greater or lesser societies, as best pleases ourselves: the right of paternity as to dominion is at an end; and no more remains, but the love, veneration and obedience, which proceeding from a due sense of the benefits of birth and education, have their root in gratitude, and are esteemed sacred and inviolable by all that are sober and virtuous. And as it is impossible to transfer these benefits by inheritance, so it is impossible to transfer the rights arising from them. No man can be my father but he that did beget me; and it is as absurd to say I owe that duty to one who is not my father, which I owe to my father, as to say, he did beget me, who did not beget me; for the obligation that arises from benefits can only be to him that conferred them. It is in vain to say the same is due to his heir; for that can take place only when he has but one, which in this case signifies nothing; for if I, being the only son of my father, inherit a
and have the same power over my childr

had over me; if I had one hundred brothers, they must all inherit the same; and the law of England, which acknowledges one only heir, is not general, but municipal; and is so far from being general, as the precept of God and nature, that I doubt whether it was ever known or used in any nation in the world beyond our island. The words of the apostle, "if we are children, we are therefore heirs and co-heirs with Christ," are the voice of God and nature; and as the universal law of God and nature is always the same, every one of us who have children have the same right over them as Abraham, Isaac, and Jacob had over theirs; and that right which was not devolved to any one of them, but inherited by them all (I mean the right of father as father, not the peculiar promises which were not according to the law of nature, but the election of grace) is also inherited by every one of us, and ours, that is, by all mankind. But if that which could be inherited was inherited by all, and it be impossible that a right of dominion over all can be due to every one, then all that is or can be inherited by every one is that exemption from the dominion of another, which we call liberty, and is the gift of God and nature.

SECTION XVII.

IF A RIGHT OF DOMINION WERE ESTEEMED HEREDITARY ACCORDING TO THE LAW OF NATURE, A MULTITUDE OF DESTRUCTIVE AND INEXTRICABLE CONTROVERSIES WOULD THEREUPON ARISE.

THERE being no such thing therefore, according to the law of nature, as an hereditary right to the dominion of the world, or any part of it; nor one man that can derive to himself a title from the first fathers of mankind, by which he can rightly pretend to be preferred before others to that command, or a part of it; and none can be derived from Nimrod, or other usurpers, who had none in themselves; we may justly spare our pains of seeking farther into that matter. But as things of the highest importance can never be too fully explained; it may not be amiss to observe, that if mankind could be brought to believe, that such a right of dominion were by the law of God and nature hereditary, a great number of the most destructive and inextricable controversies must thereupon arise, which the wisdom and goodness of God can never enjoin, and nature, which is reason, can never intend; but at present I shall only mention two, from whence others must perpetually spring. First, if there be such a law, no human constitution can alter it: no length of time defence against it: all governments that are

formable to it are vicious and void even in their root, and must be so forever: that which is originally unjust may be justly overthrown. We do not know of any (at least in that part of the world in which we are most concerned) that is established, or exercised with an absolute power, as by the authors of those opinions is esteemed inseparable from it: many, as the empire, and other states are directly contrary; and on that account can have no justice in them. It being certain, therefore, that he or they, who exercise those governments, have no right; that there is a man to whom it doth belong, and no man knowing who he is, there is no one man who has not as good a title to it as any other; there is not therefore one who hath not a right, as well as any, to overthrow that which hath none at all. He that hath no part in the government may destroy it, as well as he that has the greatest; for he neither has that which God ordained he should have, nor can shew a title to that which he enjoys from that original prerogative of birth, from whence it can only be derived.

If it be said, that some governments are arbitrary, as they ought to be, and France, Turkey, and the like be alledged as instances, the matter is not mended: for we do not only know when those, who deserve to be regarded by us, were not absolute, and how they came to be so; but also, that those very families which are now in possession, are not of a very long continuance, had no more title to the original right we speak of than any other men, and consequently can have none to this day. And though

we cannot perhaps say, that the governments of the barbarous eastern nations were ever other than they are; yet the known original of them deprives them of all pretence to the patriarchal inheritance, and they may be as justly as any other, deprived of the power to which they have no title.

In the second place, though all men's genealogies were extant and fully verified, and it were allowed, that the dominion of the world, or every part of it, did belong to the right heir of the first progenitor, or any other to whom the first did rightly assign the parcel, which is under question: yet it were impossible for us to know who should be esteemed the true heir, or according to what rule he should be judged so to be: for God hath not by a precise word determined it, and men cannot agree about it, as appears by the various laws and customs of several nations, disposing severally of hereditary dominions.

It is a folly to say, they ought to go to the next in blood; for it is not known who is that next. Some give the preference to him, who amongst many competitors is the fewest degrees removed from their common progenitor who first obtained the crown: others look only upon the last that possessed it. Some admit of representation, by which means the grandchild of a king by his eldest son is preferred before his second son, he being said to represent his dead father, who was the eldest: others exclude these, and advance the younger son, who is nearer by one degree to the common progen-

itor that last enjoyed the crown than the grandchild. According to the first rule, Richard the 2nd was advanced to the crown of England, as son of the eldest son of Edward the 3d, before his uncles, who by one degree were nearer to the last possessor: and in pursuance of the second, Sancha, surnamed the brave, second son of Alphonso the wise king of Castile, was preferred before Alphonso son of Ferdinand his eldest brother, according to the law of thanestry, which was in force in Spain ever since we have had any knowledge of that country, as appears by the contest between Corbis and Orsua, decided by combat before Scipio Africanus; continued in full force as long as the kingdom of the Goths lasted; and was ever highly valued, till the house of Austria got possession of that country, and introduced laws and customs formerly unknown to the inhabitants.

The histories of all nations furnish us with innumerable examples of both sorts; and whosoever takes upon him to determine which side is in the right, ought to shew by what authority he undertakes to be the judge of mankind, and how the infinite breaches thereby made upon the rights of the governing families shall be cured, without the overthrow of those that he shall condemn, and of the nations where such laws have been in force as he dislikes: and till that be done, in my opinion, no place will afford a better lodging for him that shall impudently assume such a power, than the new buildings in Moorfields.

It is no less hard to decide, whether this next heir is to be sought in the male line only, or whether females also be admitted. If we follow the first as the law of God and nature, the title of our English kings is wholly abolished; for not one of them, since Henry the 1st, has had the least pretence to an inheritance by the masculine line; and if it were necessary, we have enough to say of those that were before them.

If it be said that the same right belongs to females, it ought to be proved that women are as fit as men to perform the office of a king; that is, as the Israelites said to Samuel, to go in and out before us, to judge us, and to fight our battles; for it were an impious folly to say, that God had ordained those for the offices on which the good of mankind so much depends, who by nature are unable to perform the duties of them. If on the other side, the sweetness, gentleness, delicacy, and tenderness of the sex, render them so unfit for manly exercises, that they are accounted utterly repugnant to, and inconsistent with, that modesty which does so eminently shine in all those that are good amongst them; that law of nature which should advance them to the government of men, would overthrow its own work, and make those to be the heads of nations, which cannot be the heads of private families; for, as the apostle says, "the woman is not the head of the man, but the man is the head of the woman." This were no less than to oblige mankind to lay

name of reasonable creature: for if reason be his nature, it cannot enjoin that which is contrary to itself; if it be not, the definition "*homo est animal rationale*," is false, and ought no longer to be assumed.

If any man thinks these arguments to be mistaken or misapplied, I desire him to inquire of the French nation, on what account they have always excluded females, and such as descended from them? How comes the house of Bourbon to be advanced to the throne before a great number of families that come from the daughters of the house of Valois? Or what title those could have before the daughters of the other lines, descended from Hugh Capet, Pepin, Meroveus or Pharamond? I know not how such questions would be received; but I am inclined to think, that the wickedness and folly of those who should thereby endeavour to overthrow the most ancient and most venerated constitutions of the greatest nations, and by that means to involve them in the most inextricable difficulties, would be requited only with stones.

It cannot be denied, that the most valiant, wise, learned, and best polished nations, have always followed the same rule, though the * weak and barbarous acted otherwise; and no man ever heard of a queen, or a man deriving his title from a female

* .....Reginarumque sub armis
Barberies pars magna jacet.....Lucan. Phars.

among the ancient civilized nations: but if this be not enough, the law of God, that wholly omits females, is sufficient to shew, that nature, which is his handmaid, cannot advance them. When God describes who should be the king of his people* (if they would have one) and how he should govern, no mention is made of daughters. The Israelites offered the kingdom to Gideon, and to his sons: God promised, and gave it to Saul, David, Jeroboham, Jehu, and their sons. When all of them, save David, by their crimes, fell from the kingdom, the males only were extirpated, and the females, who had no part in the promises, did not fall under the penalties, or the vengeance that was executed upon those families: and we do not, in the word of God, or in the history of the Jews, hear of any feminine reign, except that which was usurped by Athaliah; nor that any consideration was had of their descendants in relation to the kingdom: which is enough to shew that it is not according to the law of God, nor to the law of nature, which cannot differ from it. So that females, or such as derive their right by inheritance from females, must have it from some other law, or they can have none at all.

But though this question were authentically decided and concluded, that females might or might not succeed, we should not be at the end of our contests; for if they were excluded, it would not from thence follow, as in France, that their descendants

* Deut. xvii.

should be so also; for the privilege which is denied to them, because they cannot, without receding from the modesty and gentleness of the sex, take upon them to execute all the duties required, may be transferred to their children, as Henry the 2nd, and Henry the 7th, were admitted, though their mothers were rejected.

If it be said that every nation ought in this to follow their own constitutions, we are at an end of our controversies; for they ought not to be followed, unless they are rightly made; they cannot be rightly made, if they are contrary to the universal law of God and nature. If there be a general rule, it is impossible but some of them, being directly contrary to each other, must be contrary to it. If therefore all of them are to be followed, there can be no general law given to all; but every people is by God and nature left to the liberty of regulating these matters relating to themselves according to their own prudence or convenience: and this seems to be so certainly true, that whosoever does, as our author, propose doctrines to the contrary, must either be thought rashly to utter that which he does not understand, or maliciously to cast balls of division among all nations, whereby every man's sword would be drawn against every man, to the total subversion of all order and government.

SECTION XVIII.

KINGS CANNOT CONFER THE RIGHT OF FATHER UPON PRINCES, NOR PRINCES UPON KINGS.

LEST what has been said before by our author should not be sufficient to accomplish his design of bringing confusion upon mankind, and some may yet lie still for want of knowing at whose command he shall cut his brother's throat, if he has not power or courage to set up a title for himself, he has a new project that would certainly do his work, if it were received. Not content with the absurdities and untruths already uttered in giving the incommunicable right of fathers, not only to those who, as is manifestly testified by sacred and profane histories, did usurp a power over their fathers, or such as owed no manner of obedience to them; and justifying those usurpations, which are most odious to God, and all good men, he now fancies a kingdom so gotten may escheat for want of an heir; whereas there is no need of seeking any, if usurpation can confer a right; and that he who gets the power into his hands, ought to be reputed the right heir of the first progenitor; for such a one will be seldom wanting, if violence and fraud be justified by the command of God, and nations stand obliged to render obedience, till a stronger or more successful villain throws him from the throne he had invaded. But if it should come t no man would step into the vacant place,

new way of depriving the people of their right to provide for the government of themselves. "Because," says he, "the dependency of ancient families is oft obscure, and worn out of knowledge; therefore the wisdom of all, or most princes, hath thought fit many times to adopt those for heads of families, and princes of provinces, whose merits, abilities, or fortunes, have ennobled them, and made them fit and capable of such royal favours: all such prime heads and fathers have power to consent to the uniting and conferring of their fatherly right and sovereignty on whom they please," &c.

I may justly ask, how any one or more families come to be esteemed more ancient than others, if all are descended from one common father, as the scriptures testify; or to what purpose it were to inquire what families were the most ancient, if there were any such, when the youngest and most mean by usurpation gets an absolute right of dominion over the eldest, though his own progenitors, as Nimrod did; but I may certainly conclude, that whatever the right be that belongs to those ancient families, it is inherent in them, and cannot be conferred on any other by any human power; for it proceeds from nature only. The duty I owe to my father does not arise from an usurped or delegated power, but from my birth derived from him; and it is as impossible for any man to usurp or receive by the grant of another the right of a father over me, as for him to become, or pretend to be made my father by another

who did not beget me. But if he say true, this right of father does not arise from nature; nor the obedience that I owe to him that begot me, from the benefits which I have received, but is merely an artificial thing, depending upon the will of another: and that we may be sure there can be no error in this, our author attributes it to the wisdom of princes. But before this comes to be authentic, we must at the least be sure that all princes have this great and profound wisdom, which our author acknowledges to be in them, and which is certainly necessary for the doing of such great things, if they were referred to them. They seem to us to be born like other men, and to be generally no wiser than other men. We are not obliged to believe that Nebuchadnezzar was wise till God had given him the heart of a man, or that his grandson Belshazzar, who being laid in the balance was found too light, had any such profound wisdom. Ahasuerus shewed it not, in appointing all the people of God to be slain, upon a lie told him by a rascal; and the matter was not very much mended, when, being informed of the truth, he gave them leave to kill as many of their enemies as they pleased. The hardness of Pharaoh's heart, and the overthrow thereby brought upon himself and people, does not argue so profound a judgment as our author presumes every prince must have: and it is not probable that Samuel would have told Saul, "he had done foolishly," if kings had always been so exceeding wise: nay, if wisdom had been annexed to the character, Solomon n

spared the pains of asking it from God, and Rehoboam must have had it.* Not to multiply examples out of scripture, it is believed, that Xerxes had not inflicted stripes upon the sea for breaking his navy in pieces, if he had been so very wise. Caligula for the same reason might have saved the labour of making love to the moon, or have chosen a fitter subject to advance to the consulate than his horse Incitatus: † Nero had not endeavoured to make a woman of a man nor married a man as a woman. Many other examples might be alledged to shew, that kings are not always wise: and not only the Roman satirist, who says, "*Quicquid delirant reges,*" ‡ &c. shews that he did not believe them to be generally wiser than other men; but Solomon himself judges them to be as liable to infirmities, when he prefers a wise child before an old and foolish king. If therefore the strength of our author's argument lies in the certainty of the wisdom of kings, it can be of no value, till he proves it to be more universal in them than history or experience will permit us to believe. Nay, if there be truth or wisdom in the scripture, which frequently represents the wicked man as a fool, we cannot think that all kings are wise, unless it be proved that none of them have been wicked; and when this is performed by Filmer's disciples, I shall confess my error.

* Herod. l. vii. c. 35. † Sueton. vit. Cal. c. 22, et 55.
‡ Horat. Epist. l. I. ii. 14.

Men give testimony of their wisdom, when they undertake that which they ought to do, and rightly perform that which they undertake; both which points do utterly fail in the subject of our discourse. We have often heard of such as have adopted those to be their sons who were not so, and some civil laws approve it. This signifies no more, than that such a man, either through affection to one who is not his son, or to his parents, or for some other reason, takes him into his family, and shews kindness to him, as to his son; but the adoption of fathers is a whimsical piece of nonsense. If this be capable of an aggravation, I think none can be greater than not to leave it to my own discretion, who, having no father, may resolve to pay the duty I owed to my father to one who may have shewed kindness to me; but for another to impose a father upon a man, or a people composed of fathers, or such as have fathers, whereby they should be deprived of that natural honour and right, which he makes the foundation of his discourse, is the utmost of all absurdities. If any prince, therefore, have ever undertaken to appoint fathers of his people, he cannot be accounted a man of profound wisdom, but a fool, or a madman; and his acts can be of no value. But if the thing were consonant to nature, and referred to the will of princes (which I absolutely deny) the frequent extravagancies committed by them in the elevation of their favourites shew, that they intend not to make them fathers of the people, or know not what they do when they do it.

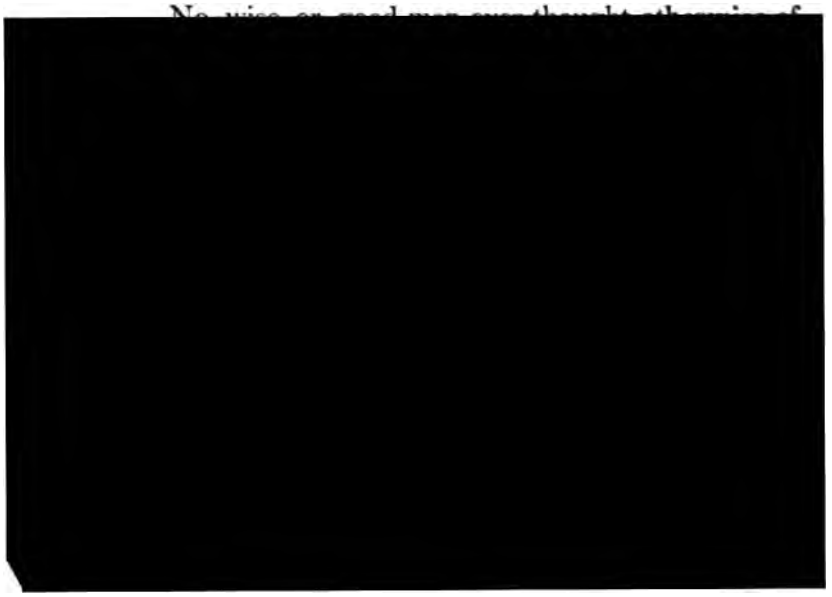
To choose or institute a father is nonsense in the very term; but if any were to be chosen to perform the office of fathers to such as have none, and are not of age to provide for themselves, as men do tutors or guardians for orphans, none could be capable of being elected, but such as in kindness to the person they were to take under their care, did most resemble his true father, and had the virtues and abilities required rightly to provide for his good. If this fails, all right ceases; and such a corruption is introduced as we saw in our court of wards, which the nation could not bear, when the institution was perverted, and the king, who ought to have taken a tender care of the wards and their estates, delivered them as a prey to those whom he favoured.

Our author ridiculously attributes the title and authority of father to the word prince; for it hath none in it, and signifies no more than a man who in some kind is more eminent than the vulgar. In this sense Mutius Scævola told Porsenna, that "three hundred princes of the Roman youth had conspired against him;" * by which he could not mean, that three hundred fathers of the Roman youth, but three hundred Roman young men had conspired: and they could not be fathers of the city, unless they had been fathers of their own fathers. "*Princeps senatus*" was understood in the same sense; and T. Sempius the censor, choosing Q. Fabius Maximus to that honour, gave for a reason, "*se lecturum*

* Trecenti Romanæ juventutis principes. T. Liv. l. ii. c. 12.

2. Fabium Maximum, quem tum principem Romanæ civitatis esse, vel Annibie judice, dicturus esset;" * which could not be understood that Hannibal thought him to be the father or lord of the city, for he knew he was not; but the man, who for wisdom and valour was the most eminent in it.

The like are, and ought to be, the princes of every nation; and though something of honour may justly be attributed to the descendants of such as have done great services to their country, yet they who degenerate from them cannot be esteemed princes; much less can such honours or rights be conferred upon court-creatures or favourites. Tiberius, Caligula, Claudius, Nero, Galba, and others, could advance Macro, Pallas, Narcissus, Tigellinus, Vinnius, Laco, and the like, to the highest degrees of riches and power; but they still continued to be villains, and so they died.



war; or by the charity of some good person saved from the teeth of wild beasts, or from the sword by which his parents fell, and may have been educated with that care which fathers usually have of their children: it is reasonable, that such a one in the whole course of his life should pay that veneration and obedience to him who gave him as it were a second birth, which was due to his natural father; and this, though improperly, may be called an adoption. But to think that any man can assume it to himself, or confer it upon another; and thereby arrogate to himself the service and obedience which by the most tender and sacred laws of nature we owe to those from whom we receive birth and education, is the most preposterous folly that hitherto has ever entered into the heart of man.

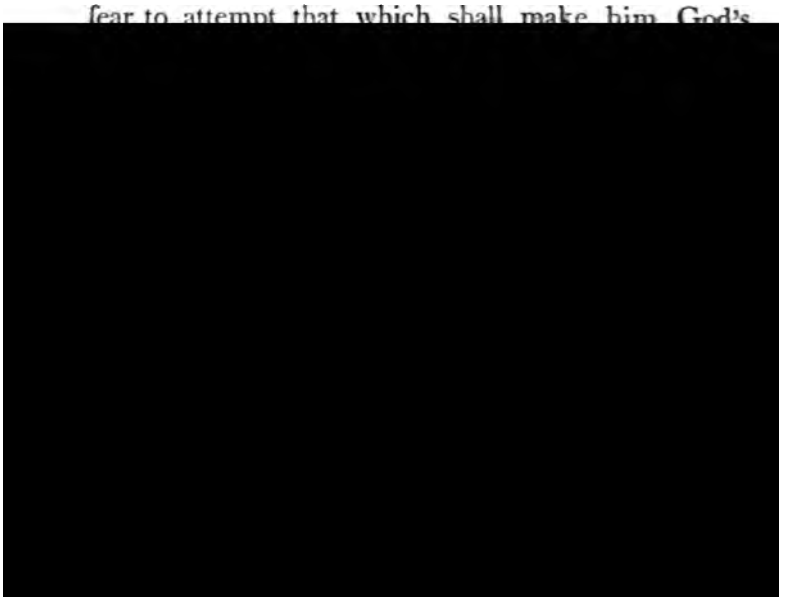
Our author nevertheless is not ashamed of it, and gives reasons no way unsuitable to the proposition. "Men are," says he, "adopted fathers of provinces for their abilities, merits, or fortunes." But these abilities can simply deserve nothing; for if they are ill employed, they are the worst of vices, and the most powerful instruments of mischief. Merits in regard of another, are nothing, unless they be to him; and he alone can merit from me the respect due to a father, who hath conferred benefits upon me, in some measure proportionable to those which we usually receive from our fathers: and the world may judge, whether all the court-ministers and favourites that we have known, do upon this account deserve to be

esteemed fathers of nations. But to allow this on account of their fortunes, is, if possible, more extravagant than any thing that hath been yet uttered. By this account Mazarin must have been father of the French nation: the same right was inherited by his chaste niece, and remained in her, till she and her silly husband dissipated the treasures which her uncle had torn from the bowels of that people. The partizans may generally claim the same right over the provinces they have pillaged: old Audley, Dog Smith, Bishop Duppa, Brownloe, Child, Dashwood, Fox, &c. are to be esteemed fathers of the people of England. This doctrine is perfectly canonical, if Filmer and Heylin were good divines: and legal, if they judged more rightly touching matters of law. But if it be absurd and detestable, they are to be reputed men, who, by attributing the highest honours to the vilest wretches of the world, for what they had gained by the most abominable means, endeavour to increase those vices which are already come to such a height, that they can by no other way be brought

men of the greatest fortunes, without examining how they came to them, or what use they make of them, deserve to be made fathers of provinces.

But this is not his only quarrel with all that is just and good; his whole book goes directly against the letter and spirit of the scripture. The work of all those, whom God in several ages has raised up to announce his word, was to abate the lusts and passions that arise in the hearts of men; to shew the vanity of worldly enjoyments, with the dangers that accompany riches and honours, and to raise our hearts to the love of those treasures that perish not. Honest and wise men, following the light of nature, have in some measure imitated this. Such as lived private lives, as Plato, Socrates, Epictetus, and others, made it their business to abate men's lusts by shewing the folly of seeking vain honours, useless riches, or unsatisfying pleasures; and those who were like to them, if they were raised to supreme magistracies, have endeavoured by the severest punishments to restrain men from committing the crimes by which riches are most commonly gained. But Filmer and Heylin lead us into a new way; if they deserve credit, whosoever would become supreme lord and father of his country, absolute, sacred, and inviolable, is only to kill him that is in the head of government: usurpation confers an equal right with election or inheritance: we are to look upon the power, not the ways by which it is obtained: possession only is to be regarded; and men must venerate the present power, as set up by

God, though gained by violence, treachery, or poison: children must not impose laws upon, nor examine the actions of their father. Those who are a little more modest, and would content themselves with the honour of being fathers and lords only of provinces, if they get riches by the favour of the king, or the favour of the king by riches, may receive that honour from him: the lord paramount may make them peculiar lords of each province as sacred to himself: and by that means every man shall have an immediate and subaltern father. This would be a spur to excite even the most sleeping lusts; and a poison that would fill the gentlest spirits with the most violent furies. If men should believe this, there would hardly be found one of whom it might not be said, "*Hac spe, minanti fulmen, occurret Jovi.*" * No more is required to fill the world with fire and blood, than the reception of these precepts: no man can look upon that as a wickedness, which shall render him sacred; nor fear to attempt that which shall make him God's



ability, or merit, is naturally or divinely required to make them capable of this sublime character: whether the right of this chimerical father does not destroy that of the natural; or whether both continue in force, and men thereby stand obliged, in despite of what Christ said, to serve two masters. For if the right of my artificial father arise from any act of the king in favour of his riches, abilities, or merit, I ought to know whether he is to excel in all, or any one of these points; how far, and which of them gives the preference; since it is impossible for me to determine whether my father, who may be wise, though not rich, is thereby divested of his right, and it comes to be transferred to another who may be rich, though not wise, nor of any personal merit at all, till that point be decided; or so much as to guess, when I am emancipated from the duty I owe to him, by whom I was begotten and educated, unless I know whether he be fallen from his right, through want of merit, wisdom, or estate; and that can never be, till it be determined, that he hath forfeited his right, by being defective in all or any of the three; and what proportion of merit, wisdom, or estate, is required in him, for the enjoyment of his right, or in another that would acquire it: for no man can succeed to the right of another, unless the first possessor be rightly deprived of it; and it cannot belong to them both, because common sense universally teaches, that two distinct persons cannot, at the same time, and in the same degree, have an equal right to the same individual thing.

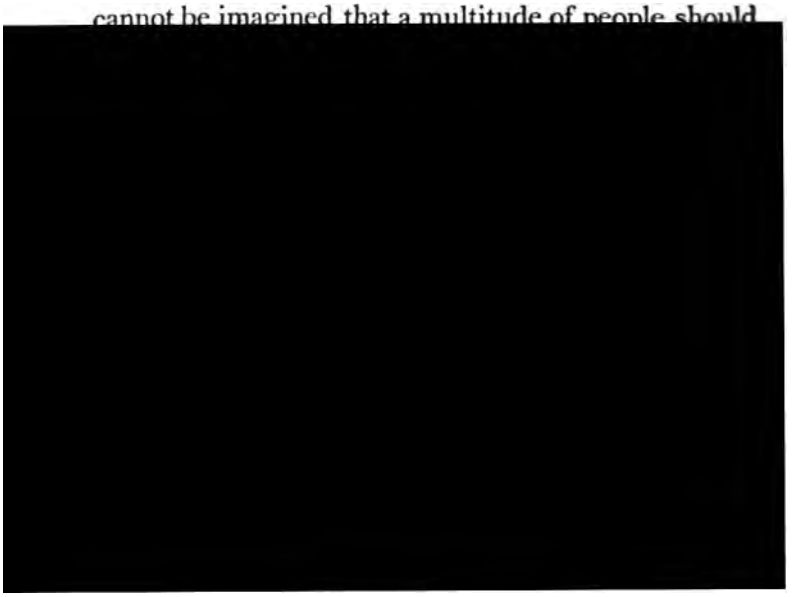
The right of father cannot therefore be conferred upon princes by kings, but must forever follow the rule of nature. The character of a father is indelible, and incommunicable: the duty of children arising from benefits received is perpetual, because they can never not have received them; and can be due only to him from whom they are received. For these reasons, we see, that such as our author calls princes, cannot confer it upon a king; for they cannot give what they have not in themselves: they who have nothing, can give nothing: they who are only supposititious, cannot make another to be real; and the whimsy of kings making princes to be fathers, and princes conferring that right on kings, comes to nothing.

SECTION XIX.

by the same reason, it doth forever belong to every man that begets children; it plainly appears, that no father can have a right over others, unless it be by them granted to him, and that he receive his right from those who granted it. But our author, with an admirable sagacity peculiar to himself, discovers, and with equal confidence tells us, that that which is from the people, or the chief heads of them, is not from the people: "he that is so elected," says he, "claims not his right from the people as a donative, but from God." That is, if I mistake it not, Romulus was not made king of the Romans by that people, but by God: those men being newly gathered together, had two fathers, though neither of them had any children; and no man knew who was their father, nor which of them was the elder: but Romulus, by the slaughter of his brother, decided all questions, and purchased to himself a royal charter from God; and the act of the people which conferred the power on him, was the act of God. We had formerly learnt, that whatsoever was done by monarchs was to be imputed to God; and that whosoever murdered the father of a people, acquired the same right to himself: but now it seems, that nations also have the same privilege, and that God doth what they do. Now I understand why it was said of old, "*Vox populi est vox Dei:*" but if it was so in regard of Romulus, the same must be confessed of Tullus Hostilius, Ancus Martius, Tarquinius Priscus, and Servius Tullus; who being all strangers to each other, and most of them aliens also, were successively advanced by the same

people, without any respect to the children, relations, or heirs of their predecessors. And I cannot comprehend, why the act of the same people should not have the same virtue, and be equally attributed to God, when they gave the same or more power to consuls, military tribunes, decemviri, or dictators; or why the same divine character should not be in the same manner conferred upon any magistracies, that by any people have been, are, or shall be at any time erected for the same ends.

Upon the same grounds we may conclude, that no privilege is peculiarly annexed to any form of government; but that all magistrates are equally the ministers of God, who perform the work for which they were instituted; and that the people which institutes them, may proportion, regulate, and terminate their power, as to time, measure, and number of persons, as seems most convenient to themselves, which can be no other than their own good. For it cannot be imagined that a multitude of people should

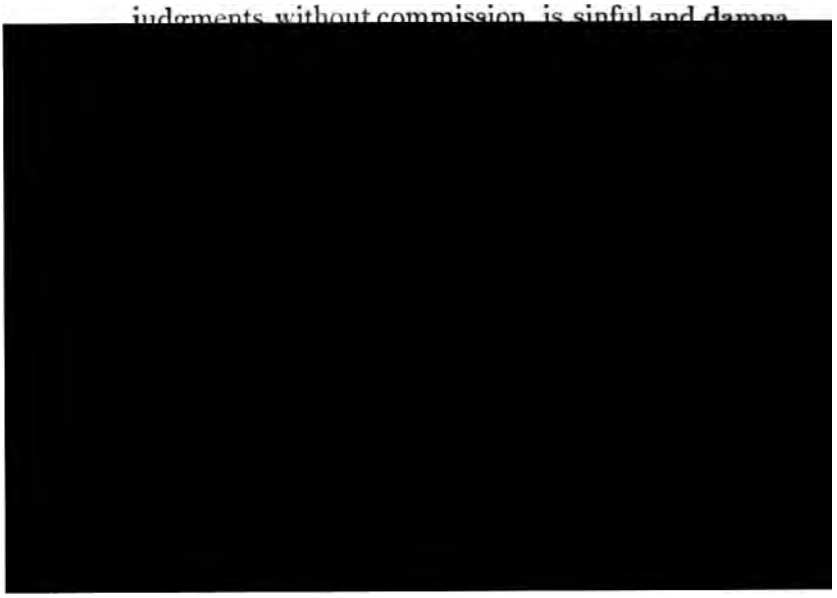


matters of that nature: and the apostle from better authority declares, "That rulers are not a terror to good works, but to evil: wilt thou then be afraid of the power?* Do that which is good, and thou shalt have praise of the same; for he is the minister of God unto thee for good: but if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doth evil."† And the reason he gives "for praying for kings, and all that are in authority," is, "that we may live a quiet and peaceable life, in all godliness and honesty." But if this be the work of the magistrate, and the glorious name of God's minister be given to him for the performance of it, we may easily see to whom that title belongs. "His children and servants ye are, whose works ye do." He therefore, and he only, is the servant of God, who does the work of God; who is a terror to those that do evil, and a praise to those that do well; who beareth the sword for the punishment of wickedness and vice, and so governs, that the people may live quietly in all godliness and honesty. The order of his institution is inverted, and the institution vacated, if the power be turned to the praise of those that do evil, and becomes a terror to such as do well; and that none who live honestly and justly can be quiet under it. If God be the fountain of justice, mercy, and truth, and those his servants who walk in them, no exercise of violence, fraud, cruelty, pride, or avarice, is patronized by

* Rom. xiii. † 1 Tim. ii.

him: and they who are the authors of those villanies, cannot but be the ministers of him, who sets himself up against God; because it is impossible, that truth and falsehood, mercy and cruelty, justice and the most violent oppression, can proceed from the same root. It was a folly and a lie in those Jews, to call themselves the children of Abraham, who did not the works of Abraham; and Christ declared them to be the children of the devil,* whose works they did; which words, proceeding from the eternal truth, do as well indicate to us whose child and servant every man is to be accounted, as to those who first heard them.

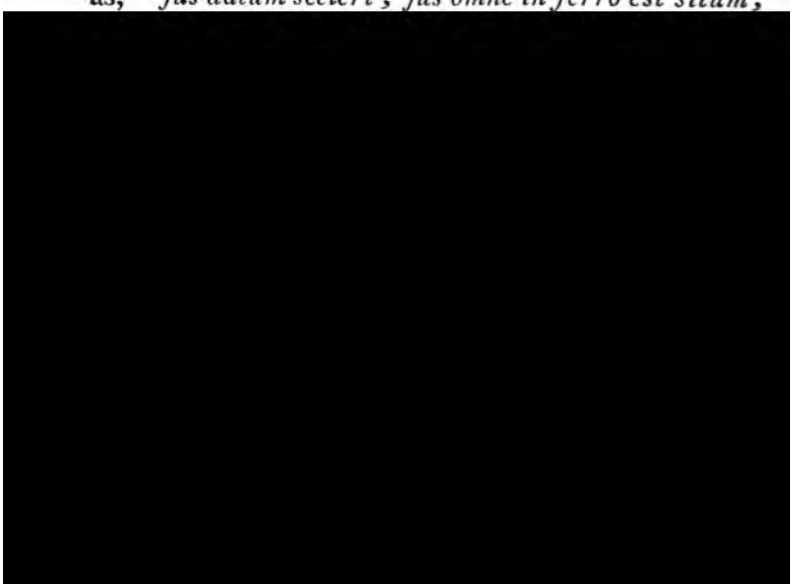
If our author's former assertions were void of judgment and truth, his next clause shews a great defect in his memory, and contradicts the former: "The judgments of God," says he, "who hath power to give and take away kingdoms, are most just; yet the ministry of men, who execute God's judgments without commission, is sinful and damna-



minister of God; which I take to be a piece of divinity worthy our author and his disciples.

It may be doubted what he means by a commission from God; for we know of none but what is outwardly by his word, or inwardly by his Spirit: and I am apt to think, that neither he nor his abettors allowing of either, as to the point in question, he doth foully prevaricate, in alledging that which he thinks cannot be of any effect. If any man should say, that the word of God to Moses, Joshua, Ehud, Gideon, Samuel, Jeroboam, and Jehu, or any others are, in the like cases, rules to be observed by all; because that which was from God was good; that which was good, is good; and he that does good, is justified by it; he would probably tell us that what was good in them, is not good in others: and that the word of God doth justify those only to whom it is spoken: that is to say, no man can execute the just judgments of God to the benefit of mankind, according to the example of those servants of God, without damnable sin, unless he have a precise word particularly directed to him for it, as Moses had. But if any man should pretend, that such a word was come to him, he would be accounted an enthusiast, and obtain no credit. So that, which way soever the clause be taken, it appears to be full of fraud, confessing only in the theory, that which he thinks can never be brought into practice; that his beloved villanies may be thereby secured, and that the glorious examples of the most heroic actions, performed by the best and wisest men that ever were in the world for the benefit of mankind, may never be imitated.

The next clause shews, that I did our author no wrong in saying, that he gave a right to usurpation; for he plainly says, " That whether the prince be the supreme father of his people, or the true heir of such a father; or whether he come to the crown by usurpation, or election of the nobles or people, or by any other way whatsoever, &c. it is the only right and authority of the natural father." In the 3d chap. sect. 8: " It matters not which way the king comes by his power, whether by election, donation, succession, or by any other means." And in another place, " That we are to regard the power, not the means by which it is gained." To which I need say no more, than that I cannot sufficiently admire the ingeniously invented title of father by usurpation; and confess, that since there is such a thing in the world, to which not only private men, but whole nations owe obedience, whatsoever has been said anciently (as was thought, to express the highest excess of fury and injustice) as, " *jus datum sceleri; jus omne in ferro est situm;*



not true, it cannot be denied, that Filmer and his followers, in the most impudent and outrageous blasphemy, have surpassed all that have gone before them.

To confirm his assertions, he gives us a wonderful explanation of the fifth commandment; which, he says, injoins obedience to princes, under the terms of "honour thy father and thy mother; drawing this inference, that as all power is in the father, the prince who hath it, cannot be restrained by any law; which being grounded upon the perfect likeness between kings and fathers, no man can deny it to be true." But if Claudius was the father of the Roman people, I suppose the chaste Messalina was the mother, and to be honoured by virtue of the same commandment: but when I fear that such as met her in the most obscene places, were not only guilty of adultery, but of incest. The same honour must needs belong to Nero, and his virtuous Poppæ, unless it were transferred to his new made woman Sporus; or perhaps he himself was the mother, and the glorious title of "*pater patriæ*" belonged to the rascal, who married him as a woman. The like may be said of Agathocles, Dionysius, Phalaris, Busiris, Machanidas, Peter the cruel of Castile, Christiern of Denmark, the last princes of the house of Valois in France, and Philip the second of Spain. Those actions of theirs, which men have ever esteemed most detestable, and the whole course of their abominable government

did not proceed from pride, avarice, cruelty, madness, and lust, but from the tender care of the most pious fathers. Tacitus sadly describes the state of his country: "*Urbs incendiis vastata, consumtis antiquissimis delubris, ipso capitolio civium manibus incenso; pollutæ ceremoniæ: magna adulteria; plenum exiliis mare; infecti cædibus scopuli; atrocius in urbe sævitum; nobilitas, opes, omissi vel gesti honores pro crimine, et ob virtutes certissimum exitium.*"* But he was to blame; all this proceeded from the ardency of paternal affection. When Nero, by the death of Helvidius Priscus and Thraseas, endeavoured to cut up virtue by the roots, "*ipsam excindere virtutem*,"† he did it, because he knew it was good for the world that there should be no virtuous man in it. When he fired the city, and when Caligula wished the people had but one neck, that he might strike it off at one blow, they did it through a prudent care of their children's good, knowing that it would be for their advantage to be

pride, cruelty, avarice, and perfidiousness, proceeded from their princely wisdom, and fatherly kindness to the nations under them: and we are beholden to him for the discovery of so great a mystery, which hath been hid from mankind from the beginning of the world to this day: if not, we may still look upon them as children of the devil; and continue to believe, that princes as well as other magistrates were set up by the people for the public good; that the praises given to such as are wise, just, and good, are purely personal, and can belong only to those, who by a due exercise of their power do deserve it, and to no others.

CHAPTER II.

SECTION I.

THAT IT IS NATURAL FOR NATIONS TO GOVERN, OR TO CHOOSE GOVERNORS; AND THAT VIRTUE ONLY GIVES A NATURAL PREFERENCE OF ONE MAN ABOVE ANOTHER, OR REASON WHY ONE SHOULD BE CHOSEN RATHER THAN ANOTHER.

In this chapter our author fights valiantly against Bellarmine and Suarez, seeming to think himself victorious, if he can shew that either of them hath contradicted the other, or himself; but being no way concerned in them, I shall leave their followers to defend their quarrel: my work is to seek after

not with reason, scripture, or the approved examples of the best polished nations. He also attacks Plato and Aristotle, upon whose opinions I set a far greater value, inasmuch as they seem to have penetrated more deeply into the secrets of human nature; and not only to have judged more rightly of the interests of mankind, but also to have comprehended in their writings the wisdom of the Grecians, with all they had learnt from the Phœnicians, Egyptians, and Hebrews; which may lead us to the discovery of the truth we seek. If this be our work, the question is not, whether it be a "paradox," or "a received opinion, that the people naturally govern or choose governors," but whether it be true or not; for many paradoxes are true, and the most gross errors have often been most common. Though I hope to prove, that what he calls a paradox, is not only true, but a truth planted in the hearts of men, and acknowledged so to be by all that have hearkened to the voice of nature, and disapproved by none but such as through wickedness, stupidity, or baseness of spirit, seem to have degenerated into the worst of beasts, and to have retained nothing of men but the outward shape, or the ability of doing those mischiefs which they have learnt from their master the devil.

We have already seen, that the patriarchical power resembles not the regal in principle or practice: that the beginning and continuance of regal power was contrary to, and inconsistent with the patriarchal: that the first fathers of mankind left all their children

independent on each other, and in equal liberty of providing for themselves: that every man continued in this liberty, till the number so increased, that they became troublesome and dangerous to each other; and finding no other remedy to the disorders growing, or like to grow among them, joined many families into one civil body, that they might the better provide for the conveniency, safety, and defence of themselves and their children. This was a collation of every man's private right into a public stock; and no one having any other right than what was common to all, except it were that of fathers over their children, they were all equally free when their fathers were dead; and nothing could induce them to join, and lessen that natural liberty by joining in societies, but the hopes of a public advantage. Such as were wise and valiant procured it, by setting up regular governments, and placing the best men in the administration; whilst the weakest and basest fell under the power of the most boisterous and violent of their neighbours. Those of the first sort had their

This appears so plainly in scripture, that the assertors of liberty want no other patron than God himself; and his word so fully justifies what we contend for, that it were not necessary to make use of human authority, if our adversaries did not oblige us to examine such as are cited by them. This, in our present case, would be an easy work, if our author had rightly marked the passages he would make use of, or had been faithful in his interpretation or explication of such as he truly cites; but failing grossly in both, it is hard to trace him.

He cites the 16th chapter of the third book of Aristotle's politics, and I do not find there is more than twelve; or though that wound might be cured, by saying the words are in the twelfth, his fraud in perverting the sense were unpardonable, though the other mistake be passed over. (It is true that Aristotle doth there seem to doubt whether there be any such thing as one man naturally a lord over many citizens, since a city consists of equals: but in the whole scope of that chapter, book, and his other writings, he fully shews his doubt did not arise from an imagination that one man could naturally inherit a right of dominion over many not descended from him; or that they were born under a necessity of being slaves to him (for such fancies can proceed only from distempered brains); but that civil societies aiming at the public good, those who by nature were endowed with such virtues or talents as were most beneficial to them, ought to be preferred. And nothing can be more contrary to the frantic whimsy

of our author, who fancies an hereditary prerogative of dominion inherent in a person as father of a people, or heir, or to be reputed heir of the first father when it is certain he is not, but that either he or his predecessor came in by election or usurpation, than to shew that it is only wisdom, justice, valour, and other commendable virtues, which are not hereditary, can give the preference; and that the only reason why it should be given, is that men so qualified can better than others accomplish the ends for which societies are constituted: for though, says he, all are equally free, all are not equally endowed with those virtues that render liberty safe, prosperous and happy. That equality which is just among equals, is just only among equals. But such as are base, ignorant, vicious, slothful, or cowardly, are not equal in natural or acquired virtues, to the generous, wise, valorous, and industrious, nor equally useful to the society as the others are: they cannot therefore have an equal power in the government of them; they cannot equally provide for the common good; and it is

digniori," in matters of this kind, is the voice of nature; and it were not only a deviation from reason, but a most desperate and mischievous madness, for a company going to the Indies, to give the guidance of their ship to the son of the best pilot in the world, if he want the skill required to that employment, or to one who was maliciously set to destroy them; and he only can have a right grounded upon the dictates of nature, to be advanced to the helm, who best knows how to govern it, and has given the best testimonies of his integrity and intentions to employ his skill for the good of those that are embarked. But as the work of a magistrate, especially if he be the supreme, is the highest, noblest, and most difficult that can be committed to the charge of a man, a more excellent virtue is required in the person who is to be advanced to it, than any other; and he that is most excellent in that virtue, is reasonably and naturally to be preferred before any other. Aristotle having this in his view, seems to think that those who believed it not to be natural for one man to be lord of all the citizens, since a city consists of equals, had not observed that inequality of endowments, virtues, and abilities, in men, which render some more fit than others for the performance of their duties, and the work intended; but it will not be found, as I suppose, that he did ever dream of a natural superiority that any man could ever have in a civil society, unless it be such a superiority in virtue as most conduces to the public good.

He confirms this in proceeding to examine the different sorts of governments, according to the different dispositions of nations; and is so bold to say, "that a popular government is the best for a people, who are naturally generous and warlike: that the government of a few suits best with those, among whom a few men are found to excel others in those virtues that are profitable to societies; and that the government of c is good, when that one does so far surpass all otl in those virtues, that he hath more of them ll the rest of the people together:" and for the same reason that induced him to believe that equality is just among equals, he concludes, inequality of power to be most unjust unless there be inequality of merit; and inequality of power to be so also, when there is inequality of virtue, that being the only rule by which every man's part ought to be regulated.

But if it be neither reasonable or just that those who are not equal in virtue should be made equal in power; or that such as are equal in virtue, should be unequal in power, the most brutal and abominable of all extravagancies is to make one or a few, who in virtue and abilities to perform civil functions are inferior to others, superior to all in power; and the miseries suffered by those nations, who inverting the laws of nature and reason, have placed children, or men of no virtue, in the government, when men that excelled in all virtues were not wanting, do so far manifest this truth, that the pains of may be spared.

It is not necessary for me to inquire, whether it be possible to find such a man as Aristotle call "*naturâ regem*," or whether he intended to recommend Alexander to the world, for the man designed by God and nature to be king over all, because no man was equal to him in the virtues that were beneficial to all. (For, pursuing my position, that virtue only can give a just and natural preference, I ingenuously confess that when such a man or race of men, as he describes, shall appear in the world, they carry the true marks of sovereignty upon them: we ought to believe, that God has raised them above all, whom he has made to excel all: it were an impious folly to think of reducing him into the ordinary level of mankind, whom God has placed above it. It were better for us to be guided by him, than to follow our own judgment; nay, I could almost say, it were better to serve such a master, than to be free. But this will be nothing to the purpose, till such a man, or succession of men, do appear; and if our author would persuade us, that all mankind, or every particular, is obliged to a perpetual subjection to one man or family, upon any other condition, he must do it by the credit of those who favour his design more than Aristotle.

I know not who that will be, but I am confident he will find no help from Plato; for if his principles be examined, by which a grave author's sense is best comprehended, it will appear, that all his books of law, and of a commonwealth, are chiefly grounded upon this, "that magistrates are chosen by soci-

ties, seeking their own good; and that the best men ought to be chosen for the attaining of it:* whereas his whole design of seeking which is the best form of government, or what laws do most conduce to its perfection and permanency (if one rule were by nature appointed for all, and none could justly transgress it; if God had designed an universal lord over the whole world, or a particular one over every nation, who could be bound by no law) were utterly absurd; and they who write books concerning political matters, and take upon them to instruct nations how to govern themselves, would be found either foolishly to misspend their time, or impiously to incite people to rebel against the ordinance of God. If this can justly be imputed to Plato, he is not the wise man he is supposed to have been; and can less deserve the title of divine, which our author gives him: but if he remain justly free from such censures, it must be confessed, that whilst he seeks what is good for a people, and to convince them by reason that it is so, he takes it for granted

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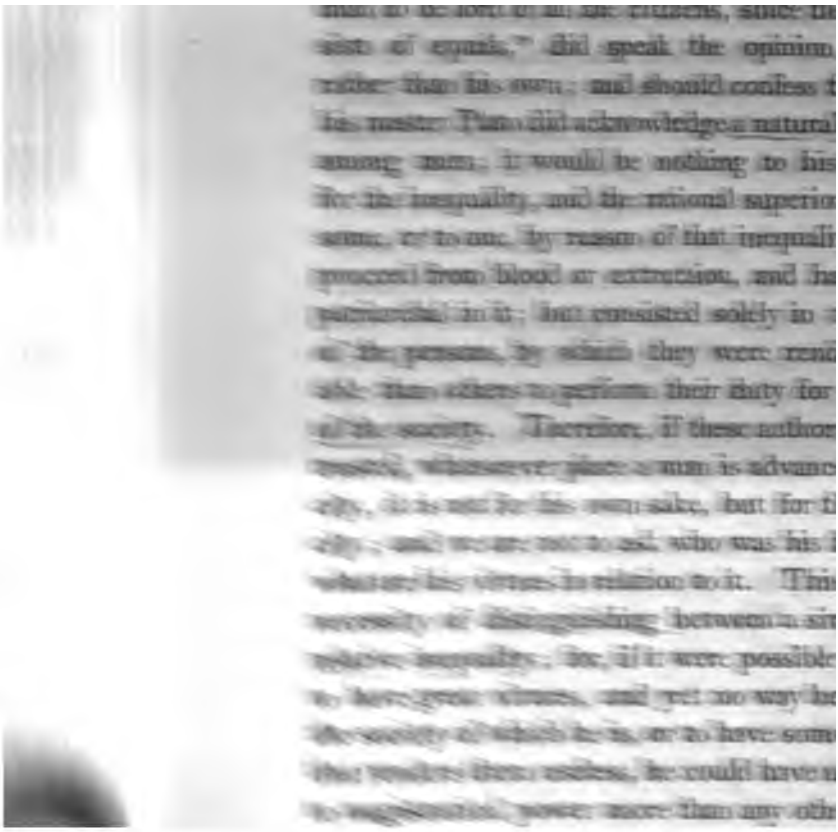
most of their power, accomplish the end of their creation, and lead the people to justice, without which there is neither perfection nor happiness: that the proper act of justice is to give to every one his due; to man that which belongs to man, and to God that which is God's. But as no man can be just or desire to be so, unless he know, that justice is good; nor know that it is good, unless he know that original justice and goodness, through which all that is just is just, and all that is good is good, it is impossible for any man to perform the part of a good magistrate, unless he have the knowledge of God; or to bring a people to justice, unless he bring them to the knowledge of God, who is the root of all justice and goodness." If Plato therefore deserve credit, he can only duly perform the part of a good magistrate, whose moral virtues are ripened and heightened by a superinduction of divine knowledge. "The misery of man proceeds from his being separated from God: this separation is wrought by corruption: his restitution therefore to felicity and integrity, can only be brought about by his re-union to the good from which he is fallen." Plato looks upon this as the only worthy object of man's desire; and in his laws and politics he intends not to teach us how to erect manufactures, and to increase trade or riches; but how magistrates may be helpful to nations in the manner before mentioned, and consequently what men are fit to be magistrates. If our author therefore would make use of Plato's doctrine to his end, he ought to have proved, that there is a family in every nation, to the chief of which, and successively

to the next in blood, God does ever reveal and infuse such a knowledge of himself, as may render him a light to others; and, failing in this, all that he says is to no purpose.

The weakness in which we are born, renders us unable to attain the good of ourselves: we want help in all things, especially in the greatest. The fierce barbarity of a loose multitude, bound by no law, and regulated by no discipline, is wholly repugnant to it: whilst every man fears his neighbour, and has no other defence than his own strength, he must live in that perpetual anxiety which is equally contrary to that happiness and that sedate temper of mind which is required for the search of it. The first step towards the cure of this pestilent evil, is for many to join in one body, that every one may be protected by the united force of all; and the various talents that men possess, may by good discipline be rendered useful to the whole; as the meanest piece of wood or stone, being placed by a wise architect, conduces to the beauty of the most glorious building. But every man bearing in his own breast affections, passions, and vices, that are repugnant to this end, and no man owing any submission to his neighbour; none will subject the correction or restriction of themselves to another, unless he also submit to the same rule. They are rough pieces of timber or stone, which it is necessary to cleave, saw, or cut: this is the work of a skilful builder, and he only is capable of erecting a great fabric, who is so trates are political architects; and they only

form the work incumbent on them, who excel in political virtues. Nature, in variously framing the minds of men, according to the variety of uses in which they may be employed, in order to the institution and preservation of civil societies, must be our guide, in allotting to every one his proper work. And Plato, observing this variety, affirms, "that the laws of nature cannot be more absurdly violated, than by giving the government of a people to such as do not excel others in those arts and virtues that tend to the ultimate ends for which governments are instituted." By this means those who are slaves by nature, or rendered so by their vices, are often set above those that God and nature had fitted for the highest commands; and societies which subsist only by order, fall into corruption, when all order is so preposterously inverted, and the most extreme confusion introduced.) This is an evil that Solomon detested: "Folly is set in great dignity, and the rich sit in low places: I have seen servants upon horses, and princes walking as servants upon the earth."* They who understand Solomon's language, will easily see, that the rich, and the princes he means, are such only who are rich in virtue and wisdom, and who ought to be preferred for those qualities: and when he says, a servant that reigneth is one of the "three things the earth cannot bear," he can only mean such as deserve to be servants; for when they reign, they do not serve, but are served by others: which perfectly agrees with what we learn from

* Eccl. x. 7.



And if no such can be found, all are equally by turns to participate of the honours annexed to magistracy; and law, which is said to be written reason, cannot justly exalt those whom nature, which is reason, hath depressed, nor depress those whom nature hath exalted. It cannot make kings slaves, nor slaves kings, without introducing that evil, which, if we believe Solomon and the Spirit by which he spoke, "the earth cannot bear." This may discover what law-givers deserve to be reputed wise or just; and what decrees or sanctions ought to be reputed laws. Aristotle, proceeding by this rule, rather tells us who is naturally a king, than where we should find him; and after having given the highest praises to this true natural king, and his government, he sticks not to declare that of one man, in virtue equal or inferior to others, to be a mere tyranny, even the worst of all, as it is the corruption of the best (or, as our author calls it, the most divine) and such as can be fit only for those barbarous and stupid nations, which, though bearing the shape of men, are little different from beasts. Whoever therefore will from Aristotle's words infer, that nature has designed one man, or succession of men, to be lords of every country, must shew that man to be endowed with all the virtues that render him fit for so great an office, which he does not bear for his own pleasure, glory, or profit, but for the good of those that are under him; and, if that be not done, he must look after other patrons than Aristotle for his opinion.

Plato does more explicitly say, that the civil or politic man, the shepherd, father, or king of a people, is the same, designed for the same work, enabled to perform it by the excellency of the same virtues, and made perfect by the infusion of the divine wisdom. This is Plato's monarch, and I confess, that wheresoever he does appear in the world, he ought to be accounted as sent from God for the good of that people. His government is the best that can be set up among men; and if assurance can be given, that his children, heirs, or successors, shall forever be equal to him in the abovementioned virtues, it were a folly and a sin to bring him under the government of any other, or to an equality with them, since God had made him to excel them all; and it is better for them to be ruled by him, than to follow their own judgment. This is that which gives him the preference; "He is wise through the knowledge of the truth, and thereby becomes good, happy, pure, beautiful and perfect. The divine light, shining forth in him, is a guide to others; and he is a fit leader of a people to the good that he enjoys."* If this can be expressed by words in fashion, this is his prerogative; this is the royal charter given to him by God; and to him only, who is so adapted for the performance of his office. He that should pretend to the same privileges, without the same abilities to perform the works for which they are granted, would exceed the

* Plato in Alcib. I. i. 2.

folly of a child, that takes upon him a burden which can only be borne by a giant; or the madness of one who presumes to give physic, and understands not the art of a physician, thereby drawing guilt upon himself and death upon his patient. It were as vain to expect that a child should carry the giant's burden, and that an ignorant man should give wholesome physic, as that one who lives void of all knowledge of good, should conduct men to it. Whensoever, therefore, such a man as is above described does not appear, nature and reason instruct us to seek him or them who are most like to him; and to lay such burdens upon them as are proportionable to their strength; which is as much as to say, to prefer every man according to his merit, and assign to every one such works as he seems able to accomplish.

But that Plato and Aristotle may neither be thought unreasonably addicted to monarchy; nor, wholly rejecting it, to have talked in vain of a monarch, that is not to be found; it is good to consider that this is not a fiction. Moses, Joshua, Samuel, and others, were such as they define; and were made to be such, by that communion with God which Plato requires: and he in all his writings, intending the institution of such a discipline as should render men happy, wise, and good, could take no better way to bring his countrymen to it, than by shewing them, that wisdom, virtue, and purity, only, could make a natural difference among men.

'Tis not my work to justify these opinions of Plato, and his scholar Aristotle: they were men, and though wise and learned, subject to error. If they erred in these points, it hurts not me, nor the cause I maintain, since I make no other use of their books than to shew the impudence and prevarication of those, who gather small scraps out of good books to justify their assertions concerning such kings as are known amongst us; which, being examined, are found to be wholly against them; and, if they were followed, would destroy their persons and power.

But our author's intention being only to cavil, or to cheat such as are not versed in the writings of the ancients, or at least to cause those who do not make truth their guide, to waver and fluctuate in their discourses, he does in one page say, "That without doubt Moses' history of the creation guided these philosophers in finding out this lineal subjection:" and in the next affirms, "That the ignorance

perhaps justly know the beginning of mankind, they did know the beginnings and progress of the governments under which they lived; and, being assured that the first kingdoms had been those which they called "*heroum regna*," that is, of those who had been most beneficial to mankind; that their descendants in many places, degenerating from their virtues, had given nations occasion to set up aristocracies; and they also falling into corruption, to institute democracies, or mixed governments; did rightly conclude, that every nation might justly order their own affairs according to their own pleasure, and could have neither obligation nor reason to set up one man or a few above others, unless it did appear to them that they had more of those virtues which conduce to the good of civil societies, than the rest of their brethren.

Our author's cavil upon Aristotle's opinion, "That those who are wise in mind are by nature fitted to be lords, and those who are strong of body ordained to obey," deserves no answer; for he plainly falsifies the text: Aristotle speaks only of those qualities which are required for every purpose; and means no more, than that such as are eminent in the virtues of the mind deserve to govern, though they do not excel in bodily strength; and that they who are strong of body, though of little understanding, and uncapable of commanding, may be useful in executing the commands of others: but is so far from denying that one man may excel in all the perfections of mind and body, that he acknowledges

him only to be a king by nature who does so, both being required for the full performance of his duty. And if this be not true, I suppose that one who is like Agrippa Posthumus, "*corporis viribus stolide ferox*,"* may be fit to govern many nations; and Moses or Samuel, if they naturally wanted bodily strength, or that it decayed by age, might justly be made slaves, which is a discovery worthy our author's invention.

SECTION II.

EVERY MAN THAT HATH CHILDREN, HATH THE RIGHT OF A FATHER, AND IS CAPABLE OF PREFERMENT IN A SOCIETY COMPOSED OF MANY.

I AM not concerned in making good what Suarez

amine all his vastly voluminous writings. But as to the point in question, that pains may be saved; there is nothing that can be imputed to the invention of Suarez; for, "that Adam had only an economical, not a political power," is not the voice of a Jesuit, but of nature and common sense: for politic signifying no more in Greek, than civil in Latin, it is evident there could be no civil power where there was no civil society; and there could be none between him and his children, because a civil society is composed of equals and fortified by mutual compacts, which could not be between him and his children; at least, if there be any thing of truth in our author's doctrine, "that all children do perpetually and absolutely depend upon the will of their father." Suarez seems to have been of another opinion; and observing the benefits we receive from parents, and the veneration we owe to them to be reciprocal, he could not think any duty could extend farther than the knowledge of the relation upon which it was grounded; and makes a difference between the power of a father, before and after his children are made free; that is in truth, before and after they are able to provide for themselves, and to deliver their parents from the burden of taking care of them: which will appear rational to any who are able to distinguish between what a man of fifty years old, subsisting by himself, and having a family of his own, or a child of eight, doth owe to his father: the same reason that obliges a child to submit intirely to the will of his parents, when he is utterly ignorant of all things, does permit, and often injoin, men of ripe age to

examine the commands they receive before they obey them; and it is not more plain, that I owe all manner of duty, affection, and respect to him that did beget and educate me, than that I can owe nothing on any such account to one that did neither.

This may have been the opinion of Suarez: but I can hardly believe such a notion, as "that Adam, in process of time, might have servants," could proceed from any other brain than our author's; for if he had lived to this day, he could have had none under him but his own children; and if a family be not complete without servants, his must always have been defective; and his kingdom must have been so too, if that has such a resemblance to a family as our author fancies. This is evident, that a hard father may use his children as servants, or a rebellious, stubborn son may deserve to be so used; and a gentle and a good master may shew that kindness to faithful and well-deserving servants, which resembles the sweetness of a fatherly rule: but neither of

obligation of repaying them in all affection and duty: whereas the care of ever providing for their families, as they did probably increase in the time of our first long-living fathers, would have been an insupportable burthen to parents, if it had been incumbent on them. We do not find that Adam exercised any such power over Cain, when he had slain Abel, as our author fancies to be regal: the murderer went out and built a city for himself, and called it by the name of his first-born. And we have not the least reason to believe that after Adam's death Cain had any dominion over his brethren, or their posterity; or any one of them over him and his. He feared that whosoever saw him would kill him, which language does not agree with the rights belonging to the haughty title of heir apparent to the dominion of the whole earth. The like was practised by Noah and his sons, who set up colonies for themselves; but lived as private men in obscure places, whilst their children of the fourth or fifth generation, especially of the youngest and accursed son, were great and powerful kings as is fully proved in the first chapter.

Though this had been otherwise, it would have no effect upon us; for no argument drawn from the examples of Shem, Ham, and Japheth, if they and their children had continued under the dominion of Noah as long as he lived, can oblige me to resign myself, and all my concernments, absolutely into the hands of one who is not my father. But when the

contrary is evidently true in them, and their next ensuing generations, it is an admirable boldness in our author to think of imposing upon us for an eternal and universal law (when the knowledge of our first progenitors is utterly extinguished) that which was not at all regarded by those who could not be ignorant of their own original, or the duty thereby incumbent upon them, or their immediate fathers then living, to whom the rights must have belonged, if there had been any such thing in nature, or that they had been of any advantage to them: whereas in truth, if there had been such a law in the beginning, it must have vanished of itself for want of being exercised in the beginning, and could not possibly be revived after four thousand years, when no man in the world can possibly know to whom the universal right of dominion over the whole world, or particular nations, does belong; for it is in vain to speak of a right, when no one man can have a better title to it than any other. But there being no precept in the scripture for it, and the examples

providing for a succession of men worthy, and other things necessary to their welfare, may be guilty of great folly, to their own shame and misery; but can do no injustice to any in relation to an hereditary right, which can be naturally in none.

SECTION III.

GOVERNMENT IS NOT INSTITUTED FOR THE GOOD OF THE GOVERNOR, BUT OF THE GOVERNED; AND POWER IS NOT AN ADVANTAGE, BUT A BURDEN.

The follies with which our author endeavours to corrupt and trouble the world, seem to proceed from his fundamental mistakes of the ends for which governments are constituted; and from an opinion that an excessive power is good for the governor, or the diminution of it a prejudice; whereas common sense teaches, and all good men acknowledge, that governments are not set up for the advantage, profit, pleasure, or glory of one or a few men, but for the good of the society. For this reason Plato and Aristotle find no more certain way of distinguishing between a lawful king and a tyrant, than that the first seeks to procure the common good, and the other his own pleasure or profit; and doubt not to declare, that he, who according to his institution

was the first, destroys his own being and degenerates into the latter, if he deflect from that rule: he that was the best of men becomes the worst; and the father or shepherd of the people makes himself their enemy. And we may from hence collect, that in all controversies concerning the power of magistrates, we are not to examine what conduces to their profit or glory, but what is good for the public.

His second error is no less gross and mischievous than the first; and that absolute power to which he would exalt the chief magistrate, would be burdensome, and desperately dangerous, if he had it. The highest places are always slippery: men's eyes dazzle when they are carried up to them; and all that falls from them are mortal. Few kings or tyrants, says Juvenal,* go down to the grave in peace; and he did not imprudently couple them together, because in his time few or no kings were known who were not tyrants. Dyonisius thought no man left a tyranny, till he was drawn out by the heels. But Tacitus says, † "*nescit quam grave & intolerandum sit cuncta regendi onus.*"‡ Moses could not bear

* .....Sine cæde & sanguine pauci
Descendunt reges, & sicca morte tyranni.
Juv. Sat. x. l. 113.

† It is somewhat different in Tacitus. Tiberius, after Augustus' death, says in his speech to the senate, "Se.....riendo didicisse, quam arduum, quam subjectam fortunæ gendi cuncta onus."

‡ Ann. l. i. 11.

it: Gideon would not accept of any resemblance of it. The moral sense of Jotham's wise parable is eternal: the bramble coveted the power which the vine, olive, and fig-tree refused. The worst and basest of men are ambitious of the highest places, which the best and wisest reject; or if some, who may be otherwise well qualified....

[*In this place two pages are wanting in the original manuscript.*]

....as the fittest to be followed by mankind. If these philosophers and divines deserve credit, Nimrod, Ninus, Pharaoh, and the rest of that accursed crew, did not commit such excesses as were condemned by God, and abhorred by good men; but gaining to themselves the glorious character of his vicegerents, left their practices as a perpetual law to all succeeding generations; whereby the world, and every part of it, would be forever exposed to the violence, cruelty, and madness of the most wicked men that it should produce. But if these opinions comprehend an extravagancy of wickedness and madness, that was not known among men, till some of these wretches presumed to attempt the increase of that corruption under which mankind groans, by adding fuel to the worst of all vices; we may safely return to our propositions, that, God having established no such authority as our author fancies, nations are left to the use of their own judgment, in making provision for their own welfare; that there is no lawful magistrate over any of them, but such as they have set up; that

in creating them, they do not seek the advantage of their magistrate but their own: and having found that an absolute power over the people is a burden, which no man can bear; and that no wise or good man ever desired it; from thence conclude, that it is not good for any to have it, nor just for any to affect it, though it were personally good for himself; because he is not exalted to seek his own good, but that of the public.

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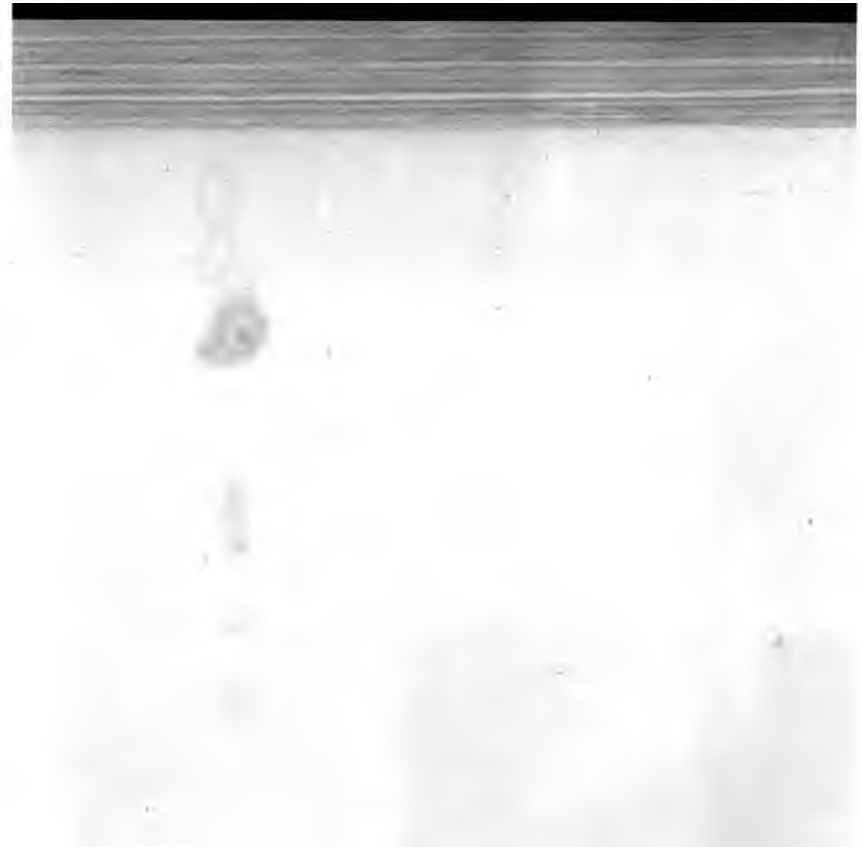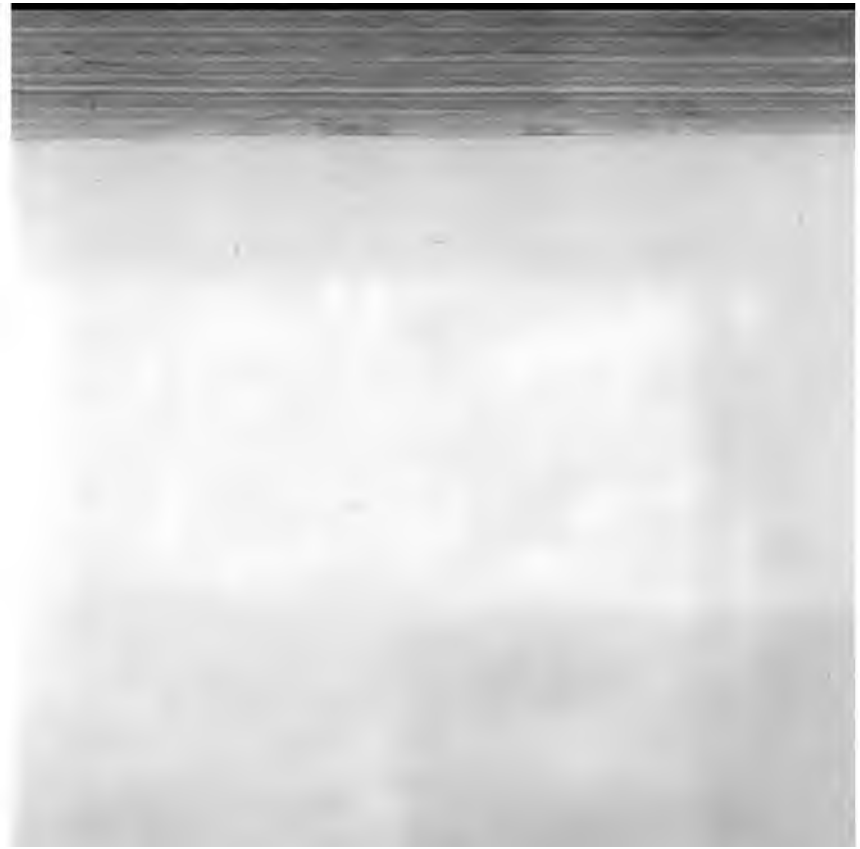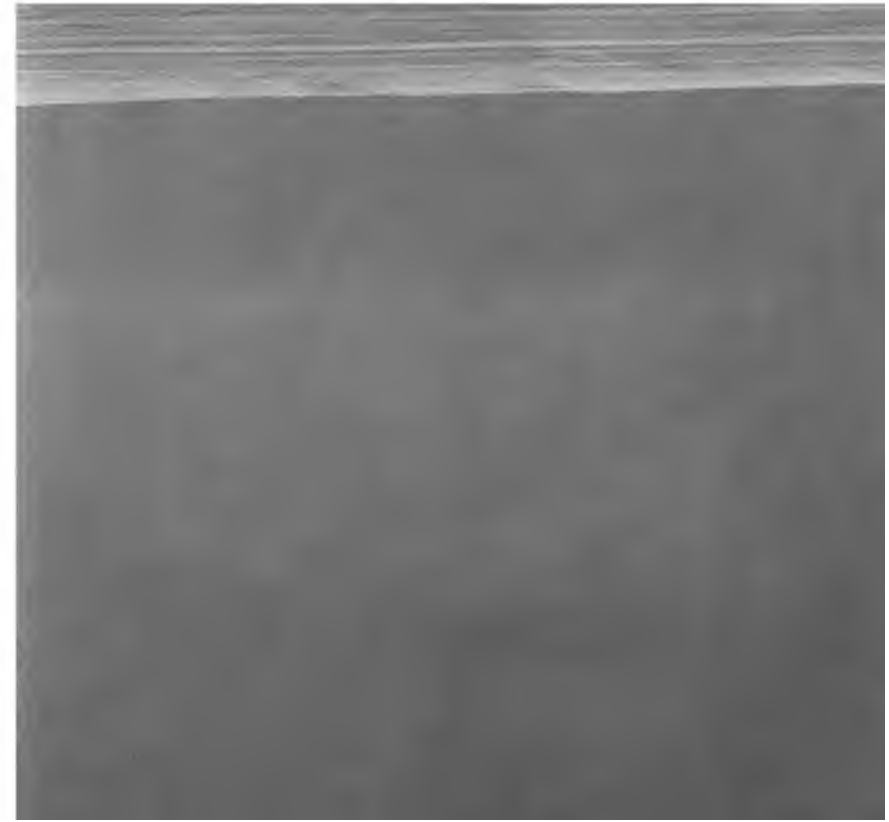
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